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TAXMANN'S
CRIMINAL
MAJOR ACTS

CODE OF CRIMINAL PROCEDURE
WITH
INDIAN PENAL CODE
AND
EVIDENCE ACT

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JUNE 1981 EDITION

RUPEES FIFTY

Published by
U.K. BHARGAVA

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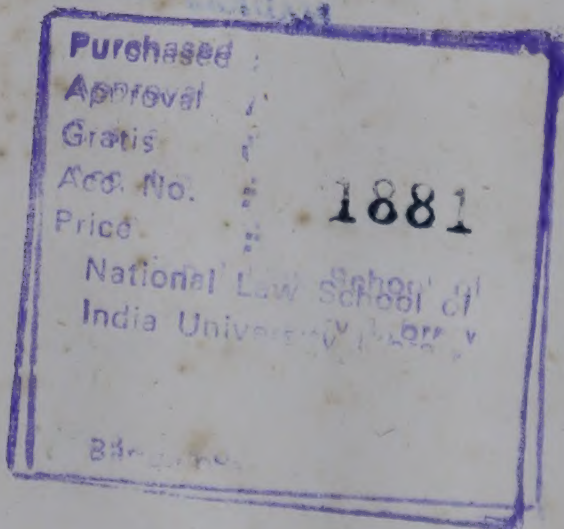
TAXMANN PUBLICATIONS (P.) LTD
1871, Kucha Chelan, Khari Baoli,
Delhi 110 006

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TAN PRINTS

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JK OFFSET PRINTERS



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1

THE CODE OF CRIMINAL PROCEDURE

The Code of Criminal Procedure, 1973

Arrangement of Sections

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The Code of Criminal Procedure, 1973

[As amended by the Code of Criminal Procedure (Amendment) Act, 1980]

Note : Amendments made by the Amendment Act, 1978 and Amendment Act, 1980 have been printed in italics in the text of the Code

An Act to consolidate and amend the law relating to Criminal Procedure

Be it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows :—

NOTES

Previous Amendments.—The Code of Criminal Procedure, 1898, has been amended from time to time by various Acts of the Central and State Legislatures. The more important of these were the amendments brought about by the Central legislation in 1923 and 1955. The amendments of 1955 were extensive and intended to simplify procedures and speed up trials as far as possible. In addition, local amendments were made by State Legislatures, of which the most important ones were those made to bring about separation of the Judiciary from the Executive. Apart from these amendments, the provisions of the Code of 1898, had remained practically unchanged through these decades and no attempt was made to have a comprehensive revision of the old Code till the Central Law Commission was set up in 1955.

Reports of Law Commission.—The first Law Commission presented its Report (the Fourteenth Report) on the Reform of Judicial Administration, both civil and criminal, in 1958. It was not concerned with detailed scrutiny of the provisions of the Code of Criminal Procedure, but it did make some recommendations in regard to the law of criminal procedure, some of which required amendments to the Code. A systematic examination of the Code was subsequently undertaken by the Law Commission not only for giving concrete form to the recommendations made in the Fourteenth Report but also with the object of attempting a general revision. The main task of the Commission was to suggest measures to remove anomalies and ambiguities brought to light by conflicting decisions of the High Courts or otherwise, to consider local

variations with a view to securing and maintaining uniformity, to consolidate laws wherever possible and to suggest improvements where necessary. Suggestions for improvements received from various sources were considered by the Commission. A comprehensive report for the revision of the Code, namely, the Forty-first Report, was presented by the Law Commission in September, 1969. This report took into consideration the recommendations made in the earlier reports of the Commission dealing with specific matters and problems, as indicated below :

1. Reform of Judicial Administration [Fourteenth Report] ;
2. Evidence of Officers of the Mint and of the Indian Security Press regarding forged stamps, currency notes, etc. (connected with section 510 of the Code) [Twenty-fifth Report] ;
3. Section 9 of the Code regarding the appointment of Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges [Thirty-second Report] ;
4. Section 44 of the Code and a suggestion to add a provision relating to the reporting of, and the disclosure in evidence about, offence relating to bribery [Thirty-third Report] ;
5. Capital punishment [Thirty-fifth Report] ;
6. Sections 497, 498 and 499 of the Code with reference to the question of granting bail with conditions [Thirty-sixth Report] ;
7. Sections 1 to 176 of the Code [Thirty-seventh Report] ; and
8. Law relating to attendance of prisoners in courts [Fortieth Report].

Another report viz., Forty-eighth Report was made by the Law Commission while the Code of Criminal Procedure Bill, 1970, was before the Joint Committee of Parliament. This Report dealt with the following points :

1. Proposal to confer jurisdiction on the C.B.I. to make investigation in respect of certain offences relating to subjects in the Union List.
2. Creation of courts under Union legislation.
3. Proposal to make confessions made to senior police officers admissible in evidence subject to certain safeguards.
4. The extent of legal aid to the poor which may be provided for in the Code.
5. Proposal to take away powers of revision against interlocutory orders.
6. Provision for grant of anticipatory bail.
7. Question whether maintenance under section 488 can be provided for in respect of indigent parents.
8. Provision for filing written arguments.
9. Suggestions for improvements in the Code in other respects with a view to curtail delays in investigation, trial or appeal.
10. Provision relating to "appointment" of Sessions Judges and other officers.
11. Design to commit an offence.
12. Admissibility of statements recorded by Magistrates.
13. Abolition of commitment proceedings.
14. Examination of the accused.
15. Sentencing.

16. Consultation by the Government with the Court, before exercising powers of pardon, etc.
17. Appeals against acquittals.
18. Appeals under article 134 of the Constitution.
19. Maintenance—other points.
20. Wife divorced extra-judicially.
21. Scope of section 488 to be extended to mother of illegitimate child and girl rendered pregnant.
22. Legal aid in proceedings for maintenance ; and
23. Cancellation of maintenance.

The new Code is based mainly on the recommendations contained in the Reports of the Law Commission referred to above.

CHAPTER I PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Code of Criminal Procedure, 1973.
- (2) It extends to the whole of India except the State of Jammu and Kashmir :
Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply—
 - (a) to the State of Nagaland,
 - (b) to the tribal areas,

but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.

Explanation : In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

- (3) It shall come into force on the 1st day of April, 1974.

NOTES

Non-applicability to J. & K. State.—Like the old Code, the new Code also does not extend to the State of Jammu and Kashmir in view of the special procedure prescribed under article 370 of the Constitution for legislation for that State in respect of matters mentioned in the Concurrent List.

Applicability to Nagaland.—As regards the State of Nagaland and the tribal areas of Assam (as specified in the Sixth Schedule to the Constitution), most of the provisions relating to (a) security proceedings (Chapter VIII), (b) maintenance of public order and tranquillity (Chapter X) and (c) preventive action of the police (Chapter XI) are already in force in large measure in those areas. Hence

the proviso stipulates that other provisions contained in the Code shall not apply to Nagaland and tribal areas unless the concerned State Government extends them by notification with such modifications, etc., as may be necessary.

Presidency towns.—The old Code had also excluded from its purview the Commissioners of Police in the Presidency Towns, the police in Bombay and Calcutta, the village headmen in the erstwhile State of Madras and the village police officers in the composite State of Bombay. The new Code has omitted these exceptions and it now applies uniformly in all these towns.

Definitions.

2. In this Code, unless the context otherwise requires,—

- (a) “bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force ; and “non-bailable offence” means any other offence ;
- (b) “charge” includes any head of charge when the charge contains more heads than one ;
- (c) “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant ;
- (d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation : A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint ; and the police officer by whom such report is made shall be deemed to be the complainant ;

- (e) “High Court” means,—
 - (i) in relation to any State, the High Court for that State ;
 - (ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court ;
 - (iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India ;
- (f) “India” means the territories to which this Code extends ;
- (g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court ;
- (h) “investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf ;
- (i) “judicial proceeding” includes any proceeding in the course of which evidence is or may be legally taken on oath ;

- (j) "local jurisdiction", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code [*and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify*];
- (k) "metropolitan area" means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;
- (l) "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;
- (m) "notification" means a notification published in the Official Gazette;
- (n) "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871);
- (o) "officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;
- (p) "place" includes a house, building, tent, vehicle and vessel;
- (q) "pleader", when used with reference to any proceeding in any Court, means a person authorised by or under any law for the time being in force, to practise in such Court, and includes any other person appointed with the permission of the Court to act in such proceeding;
- (r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;
- (s) "police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local-area specified by the State Government in this behalf;
- (t) "prescribed" means prescribed by rules made under this Code;
- (u) "Public Prosecutor" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;
- (v) "sub-division" means a sub-division of a district;
- (w) "summons-case" means a case relating to an offence, and not being a warrant-case;
- (x) "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
- (y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.

NOTES

"Complaints" [sec. 2(d)].—According to the definition of "complaint" in section 4(h) of the old Code, a complaint did not include a report of a police officer.

The Code also used different expressions relating to reports of police officers, as follows :

- a. "Police report" [Ss. 133(i), 145(i), 147, etc.].
- b. "Report of a police officer" [Ss. 4(i)(h), 114, etc.].
- c. "Report in writing made by any police officer" [S. 190(i)(b)].
- d. "Report" *simpliciter* [Ss. 62, 174(i)].

Certain questions arose as to the meaning of some of these expressions. In view of the conflicting decisions and uncertainty prevailing in this behalf, the Law Commission recommended suitable changes in the definition of "complaint" to clarify "that reports made by the police on an unauthorised investigation of non-cognizable cases are 'complaints' ". This definition incorporates these changes.

The explanation clarifies the intention that the police report will be deemed to be a complaint only if the offence is discovered, after investigation by the police, to be a non-cognizable one. It has further been clarified that in such a case the police officer who makes the report shall be deemed to be the complainant.

Maintenance application not a complaint.—One of the ingredients of a complaint is that it should contain an allegation of the commission of offence. An application under section 125 for maintenance does not contain any allegation of the commission of any offence. Hence, such an application cannot be treated as a 'complaint' as defined in clause (d) of section 2 of the Code—*Jugtambalal J. Gandhi v. State of Gujarat* 1975-76, Mah. Cr. Reporter, 437.

"Inquiry" [sec. 2(g)].—In the definition of 'inquiry' in the old Code, the verb used was 'includes'. In the definition in the new Code, the word used is "means". This change indicates that the definition in the new Code has been made **exhaustive** rather than illustrative or inclusive.—*State of Maharashtra v. Chandrashekhar Nilkanth* 1975, Mah. LJ 607.

"Local jurisdiction" [sec. 2(j)].—This definition has been added with a view to shortening the language used in some sections of the old Code. The old Code used the expression "a Court within the local limits of whose jurisdiction the offence was committed" in sections 177 to 183. This has been shortened and simplified as "a Court within whose local jurisdiction the offence was committed", in the definition.

Power of State Government to extend 'local jurisdiction'.—Originally, the jurisdiction of a Magistrate under the new definition was confined to a district only. This created difficulty in enabling the appointment of Magistrate with jurisdiction beyond a district, such as when Special Judicial Magistrates had to be appointed to try certain categories of cases or cases involving inter-district ramifications. The definition 'local jurisdiction' has, therefore, been amended by the Amendment Act, 1978 to empower the State Government to define the local jurisdiction as extending to the whole of the State or to any part thereof where necessary as for instance in cases of Special Courts or Special Judicial Magistrates.

"Metropolitan area" [sec. 2(k)].—The definition is consequent upon the replacement of presidency towns by metropolitan areas and the appointment of metropolitan magistrates in those areas [Ss. 8 and 16—19 of the new Code].

“Non-cognizable offence” [sec. 2(l)].—The definition is intended “to emphasise that a police officer has no authority to arrest a person without warrant in a non-cognizable case”.

“Place” [sec. 2(p)].—The definition of “place” has been extended to include a vehicle in order to remove a doubt expressed by the Supreme Court in *Bhagwanbhai v. State* [1963] 3 SCR 386, that a motor vehicle was not a “place” within the meaning of sections 102 and 103 of the (old) Code, so that the formalities laid down by those sections need not be observed when a motor vehicle was to be searched. Incidentally, the new definition also removes a lacuna in the old definition because, as a motor vehicle was not considered a “place”, the power of search was not considered to cover power to search a motor vehicle.

“Pleader” [sec. 2(q)].—The old definition of ‘pleader’ enumerated various classes of practitioners of law who could come within that definition. The new definition is simple.

“Police report” [sec. 2(r)].—The expression ‘police report’ has been defined consequent upon the new modified definition of ‘complaint’ [sec. 2(d)].

“Warrant case” [sec. 2(x)].—The definition secures that offences punishable with imprisonment for a term exceeding two years could be tried by the summons-case procedure. In the old Code the limit was one year. The Law Commission had recommended that for securing expeditious disposal of a larger number of cases, particularly those under special laws, summons-case procedure should be prescribed for offences punishable with imprisonment up to three years instead of one year as it was then. However, the limit has been raised to two years only.

Construction of references.

3. (1) In this Code,—

- (a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires,—
 - (i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;
 - (ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;
- (b) any reference to a Magistrate of the second class shall, in relation to an area outside a metropolitan area, be construed as a reference to a Judicial Magistrate of the second class, and, in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;
- (c) any reference to a Magistrate of the first class shall,—
 - (i) in relation to a metropolitan area, be construed as a reference to a Metropolitan Magistrate exercising jurisdiction in that area;
 - (ii) in relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;
- (d) any reference to the Chief Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Chief Metropolitan Magistrate exercising jurisdiction in that area.

(2) In this Code, unless the context otherwise requires, any reference to the Court of a Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Court of the Metropolitan Magistrate for that area.

(3) Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code,—

- (a) to a Magistrate of the first class, shall be construed as a reference to a Judicial Magistrate of the first class ;
- (b) to a Magistrate of the second class or of the third class, shall be construed as a reference to a Judicial Magistrate of the second class ;
- (c) to a Presidency Magistrate or Chief Presidency Magistrate, shall be construed as a reference, respectively, to a Metropolitan Magistrate or the Chief Metropolitan Magistrate ;
- (d) to any area which is included in a metropolitan area, as a reference to such metropolitan area, and any reference to a Magistrate of the first class or of the second class in relation to such area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in such area.

(4) Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters—

- (a) which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate ; or
- (b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

NOTES

Rules of construction.—This section contains certain rules of construction necessitated by the various changes made in the new Code. The presidency towns have been replaced by metropolitan areas and provision has been made in succeeding sections for the appointment of metropolitan magistrates in those areas. As will be seen from the relevant provisions, the powers of the Chief Metropolitan Magistrate and of the Metropolitan Magistrate are, with few exceptions, the same as those of the Chief Judicial Magistrate and of the Judicial Magistrates of the first class, respectively. In order to avoid repetitive references to the two categories of magistrates, this section has been inserted.

The Code seeks to bring about separation of the Judiciary from the Executive, whereby the functions of the magistrate under the Code have been allocated between the Judicial and the Executive Magistrates. A rule of construction in respect of laws containing references to magistrates has, therefore, been inserted in the latter part of the section so as to ensure that they also fit in with the scheme of separation adopted under the Code.

Trial of offences under the Indian Penal Code and other laws.

4. (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Saving.

5. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

NOTES

Sections 4 and 5 correspond to sections 5 and 1(2) of the old Code, respectively.

CHAPTER II**CONSTITUTION OF CRIMINAL COURTS AND OFFICES****Classes of Criminal Courts.**

6. Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely :—

- (i) Courts of Session ;
- (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates ;
- (iii) Judicial Magistrates of the second class ; and
- (iv) Executive Magistrates.

NOTES

Changes re. Courts of Magistrates.—This section deals with classes of criminal courts. The main changes made in the old Code are in regard to courts of magistrates. As a result of separation of the Judiciary from the Executive, there are now two kinds of Magistrates, namely, Judicial Magistrates (including Metropolitan Magistrates in Metropolitan areas) and Executive Magistrates. Judicial Magistrates are divided into two classes, namely, the first class and the second class. There are no third class magistrates in this set up. There is no classification of Executive Magistrates.

Special Courts under Act 33 of 1976.—It may be mentioned that by section 2(d) of the Disturbed Areas (Special Courts) Act, 1976 (33 of 1976) offences under the following provisions of the I.P.C. are triable only by a Special Court in case they are committed in any area within a State declared as disturbed area

under section 3 of that Act : sections 120B, 143-145, 147, 148, 151 to 155, 157, 158, 160, 182, 183, 186-190, 193-195, 199, 201-203, 211-214, 216, 216A, 225, 295-298, 302-304, 307, 308, 323-335, 341-348, 352-358, 363-369, 376, 379, 380, 382, 384-387, 392-399, 402, 411, 412, 426, 427, 431, 435, 436, 440, 447-462, 504-506 and 509.

Section 3 of the said Act empowers a State Government to declare, by a notification, a disturbed area within a State where there was or there is extensive disturbance of the public peace and tranquillity, by reason of differences or disputes between members of different religious, racial, language or regional groups or castes or communities. Section 4 of the Act empowers the State Government to set up Special Courts for trying such offences.

Territorial divisions.

7. (1) Every State shall be a sessions division or shall consist of sessions divisions ; and every sessions division shall, for the purposes of this Code, be a district or consist of districts :

Provided that every metropolitan area shall, for the said purposes, be a separate sessions division and district.

(2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts.

(3) The State Government may, after consultation with the High Court, divide any district into sub-divisions and may alter the limits or the number of such sub-divisions.

(4) The sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section.

NOTES

Consultation with High Court.—This section incorporates the provisions of sections 7 and 8 of the old Code dealing with territorial divisions. As a result of separation, it has been provided that the State Government shall consult the High Court concerned before altering the limits or the number of divisions and districts or making or altering the sub-division of districts.

Metropolitan areas.

8. (1) The State Government may, by notification, declare that, as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purposes of this Code.

(2) As from the commencement of this Code, each of the Presidency towns of Bombay, Calcutta and Madras and the city of Ahmedabad shall be deemed to be declared under sub-section (1) to be a metropolitan area.

(3) The State Government may, by notification, extend, reduce or alter the limits of a metropolitan area but the reduction or alteration shall not be so made as to reduce the population of such area to less than one million.

(4) Where, after an area has been declared, or deemed to have been declared to be, a metropolitan area, the population of such area falls below one million,

such area shall, on and from such date as the State Government may, by notification, specify in this behalf, cease to be a metropolitan area ; but notwithstanding such cesser, any inquiry, trial or appeal pending immediately before such cesser before any Court or Magistrate in such area shall continue to be dealt with under this Code, as if such cesser had not taken place.

(5) Where the State Government reduces or alters, under sub-section (3), the limits of any metropolitan area, such reduction or alteration shall not affect any inquiry, trial or appeal pending immediately before such reduction or alteration before any Court or Magistrate, and every such inquiry, trial or appeal shall continue to be dealt with under this Code as if such reduction or alteration had not taken place.

Explanation: In this section, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

NOTES

Metropolitan areas and Magistrates.—Following the recommendation of the Law Commission, the institution of Presidency Magistrates has been maintained in the Code under a new name. “Presidencies having disappeared from the political map of India more than 30 years ago, it is archaic to refer to Calcutta, Bombay and Madras as ‘presidency-towns’ ; and it will be a misnomer to call other large cities by that name. These areas may more appropriately be referred to as “metropolitan areas” and the special class of magistrates functioning therein as “Metropolitan Magistrates”.

Setting up of Metropolitan Courts.—It has also been provided that a State Government may by notification declare any area in the State comprising a city whose population exceeds one million to be metropolitan area, and then set up as many Courts of Metropolitan Magistrates for that area as it thinks fit.

Variation in boundaries of areas.—Power has also been conferred on the State Government to vary the boundaries of the area from time to time depending on the circumstances, but not in such manner as to reduce its population to less than a million. The four presidency towns of Bombay, Calcutta, Madras and Ahmedabad (which has special Magistrates equated with Presidency Magistrates under the Ahmedabad City Courts Act, 1961) automatically become metropolitan areas under the Code.

Court of Session.

- 9. (1) The State Government shall establish a Court of Session for every sessions division.
- (2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.
- (3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.
- (4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Explanation : For the purposes of this Code, "appointment" does not include the first appointment, posting or promotion of a person by the Government to any service, or post in connection with the affairs of the Union or of a State, whereunder any law, such appointment, posting or promotion is required to be made by Government.

NOTES

Genesis of the provision.—In the case of the *State of Assam v. Ranga Muhammad* AIR 1967 SC 903, the Supreme Court has held that all transfers of District Judges (which under article 236 of the Constitution includes Sessions Judges, Additional Sessions Judges, Asstt. Sessions Judges and Chief Presidency Magistrates, must be made only by the High Court and not by the Government. The expression 'control over district courts' used in article 235 of the Constitution covers 'posting', 'appointment', 'promotion', etc. Government's power under article 233 extends only to the making of the first appointment to the cadre of District Judges. Accordingly, section 9 is in two parts: the first part states that the State Government shall establish a Court of Session for every sessions division and the second part states that the High Court shall appoint a Judge of such court. The other sub-sections also refer to the High Court.

Sub-sections (5) & (6).—Provision has been made in sub-section (5) for the disposal of work of a Sessions Judge when the office becomes suddenly vacant (by reason, say, of the transfer or death of the judge or otherwise). Sub-section (6) provides that a Court of Session will ordinarily hold its sitting at the place or places specified by the High Court.

Explanation.—The *Explanation* clarifies the intention that 'the provisions relating to the appointment of Sessions Judges and Magistrates are not repugnant to the provisions of the Constitution or any other law relating to the first appointment and posting of a person to the relevant service or post'.

Subordination of Assistant Sessions Judges.

10. (1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.

(2) The Sessions Judge may, from time to time, make rules consistent with this Code, as to the distribution of business among such Assistant Sessions Judges.

(3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.

NOTES

This section corresponds to sub-sections (3) and (4) of section 17 of the old Code dealing with subordination of Assistant Sessions Judges, etc.

Scope of sub-section (3) and transfer of bail applications.—Sub-section (3) confers power on the Sessions Judge to make over an urgent application to the Additional or Assistant Sessions Judge or CJM, for disposal under either of the two circumstances, namely, his absence or his “inability to act”. By reason of the use of expression ‘inability to act’, a Sessions Judge can make over an urgent application for disposal to an Additional Sessions Judge not only when he is physically incapable of acting but also when he is otherwise unable to act due to pressure of other work.

The transfer of trial cases by the Sessions Judge to the Additional Sessions Judge is provided in section 194. Section 400 deals with transfer of revision cases, and the transfer of criminal appeals is dealt in section 481. The only provision therefore under which a Sessions Judge can make over an application for bail to an Additional Sessions Judge is section 10(3) — *T.V. Sarma v. A. Nagakoteswarrao* 1977 Cr. LJ 19.

Courts of Judicial Magistrates.

11. (1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify :

[*Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.*]

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

NOTES

Amendment.—The Proviso to sub-section (1) has been added by the Amendment Act, 1978.

Consultation, etc., with High Court.—This section corresponds to the first part of section 12 of the old Code. The Courts of Judicial Magistrates are to be set up in consultation with the High Court. The Magistrates

are to be appointed by the High Court and not by the State Government. Sub-section (3) enables the High Court to confer Magisterial powers on judicial officers in situations where it might not be necessary or possible to appoint full time magistrates.

State Governments' power to establish Special Courts of Judicial Magistrates.—Sub-section (1) has been amended by the Amendment Act, 1978 to empower the State Government to establish, after consulting the High Court, Special Courts of Judicial Magistrates having jurisdiction throughout any local area and to confer on such courts exclusive jurisdiction to try any particular case or particular class of cases.

Extent of High Court's power under the section.—Under section 9(4), the High Court has power to appoint a sessions judge of one division as an Additional Sessions Judge of another division also. In the absence of such a power under section 11, the High Court cannot appoint a Judicial Magistrate, First Class, of one court as Additional Judicial Magistrate, First Class, of another court. Again, in the absence of a provision similar to section 9(5) in section 11 or section 14, the High Court cannot make similar arrangements for disposal of urgent applications where the office of the Judicial Magistrate, First Class, falls vacant. In the circumstances it was held that the II Additional Munsiff and J.M.F.C. III Court, Hubli did not have, in spite of the notification issued by the High Court, the necessary power to take cognizance of offences arising out of the local limits of the areas falling within the jurisdiction of the court of J.M.F.C.—*Rangangoudar v. Angadi* 1976 Cr. LJ 572.

Significance of 'ordinary sitting'.—Where a magistrate was appointed for the districts of Rajkot, Jamnagar and Junagadh with headquarters at Rajkot and the accused who committed offence in Junagadh district and was convicted by him at Rajkot, the question arose as to where the appeal should be preferred, i.e., at Junagadh or Rajkot. Held, under section 11, the court of Judicial Magistrate should be presumed to be 'ordinary sitting' at the place where it should function and not at the headquarters. As such, the Sessions Judge at Rajkot had no jurisdiction to deal with and dispose of the appeal—*D.C. Varma v. Bhagwanji Virji* 1975-76 Mah. Cr. Reporter, 409.

Establishment of a common court for more than one district.—Under section 11(1), the High Court has no power to establish a common court of J.M.F.C. for all districts of U.P. and under section 11(2) the High Court has no power to appoint Presiding Officer of such court. Government and High Court Notifications in the matter were therefore quashed—*T.S. Bajpai v. K.K. Ganguly* 1976 Cr. LJ 514.

Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.

12. (1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

(3)(a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

NOTES

Functions of CJM.—This section provides for the appointment of a Chief Judicial Magistrate in each district, corresponding to the District Magistrate on the executive side. As may be seen from the succeeding sections, the important function of the Chief Judicial Magistrate is to guide, supervise and control other Judicial Magistrates in the District. He will himself try important cases and will have power to impose a sentence of imprisonment not exceeding seven years. Appeals against convictions by Magistrates of the second class will be heard by him. Provision has also been made to appoint Additional Chief Judicial Magistrates, whenever necessary.

SDM (Judicial).—The Code does not confer any special powers of judicial character on sub-divisional magistrates. Hence, no special provision has been made in respect of them. However, the section confers power on the High Court to designate any first class magistrate as a sub-divisional Judicial Magistrate and to confer on him certain powers of supervision and control over subordinate judicial magistrates in his sub-division. This appears to be purely for administrative purposes.

Special Judicial Magistrates.

13. (1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate [*of the first class or of the second class, in respect to particular cases or to a particular classes of cases, in any local area, not being a metropolitan area*]:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

[(3) *The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.*]

NOTES

Amendment.—The latter part of sub-section (1) and sub-section (3) have been added by the Amendment Act, 1978.

Need for Special Judicial Magistrates.—The provision contained in this section corresponds to that contained in section 14 of the old Code relating to honorary Magistrates. The provision made in the section for appointment of Special Magistrates is intended to remove from the regular courts the burden of a large volume of petty cases by having them disposed of by these Special Magistrates so that the regular courts might concentrate on more important cases. See also notes under section 18 *infra*.

Special Magistrate to have jurisdiction over any local area.—Sub-section (1) has been amended by the Amendment Act, 1978 to enable Special Judicial Magistrates to exercise jurisdiction over any local area and to enable the conferment on them the powers of a Magistrate of the First Class also.

High Court's power to authorise Special Judicial Magistrate.—The High Court has also been empowered under sub-section (3), inserted by the Amendment Act, 1978, to authorise Special Judicial Magistrate to exercise the powers of Special Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.

Local jurisdiction of judicial Magistrates.

14. (1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code :

[Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.]

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

[(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.]

NOTES

Amendment.—The Proviso to sub-section (1) and (3) have been added by the Amendment Act, 1978.

Definitions of local limits subject to High Courts' Control.—This section corresponds to the latter part of old section 12 and covers also Special Magistrates. The power to define local jurisdiction of Magistrates has been conferred on the Chief Judicial Magistrate subject to the overall control of the High Court which under the Code is the appointing authority for the Judicial Magistrates.

Special Judicial Magistrate may hold his sittings at any place within local area.—The proviso to sub-section (1) has been inserted by the Amendment Act, 1978, to enable the Court of Special Judicial Magistrate to hold its sittings at any place within the local area for which it is established. It is intended to facilitate the holding of mobile courts.

Sub-section (3).—Sub-section (3) has been inserted by the Amendment Act, 1978 to provide that where the local jurisdiction of a Magistrate extends beyond a district or metropolitan area in which he ordinarily holds his Court, references in the Code to the Court of Session or Chief Judicial Magistrate or Chief Metropolitan Magistrate shall, in relation to the entire area in the local jurisdiction, be construed as references to the Court of Session, Chief Judicial Magistrate or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction over the district in which he ordinarily holds his court.

Subordination of Judicial Magistrates.

15. (1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge ; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.
- (2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

NOTES

This section corresponds to section 17(1) and (2) of the old Code. The Chief Judicial Magistrate has been placed in the same position as the District Magistrate in so far as other Judicial Magistrates are concerned. The Sessions Judge has the general control over all Judicial Magistrates.

Courts of Metropolitan Magistrates.

16. (1) In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.
- (2) The presiding officers of such Courts shall be appointed by the High Court.
- (3) The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area.

Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate.

17. (1) The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.
- (2) The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

NOTES

The expressions "Presidency Magistrate" and the "Presidency towns" have been replaced respectively by the expressions "Metropolitan Magistrate" and the "Metropolitan areas". The appointment of such Magistrates including Chief Metropolitan Magistrates has to be made by the High Court. The High Court has also to be consulted regarding location of courts of Metropolitan Magistrates.

Special Metropolitan Magistrates.

18. (1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases [** **], in any metropolitan area within its local jurisdiction :

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Metropolitan Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

[(3) *The High Court or the State Government, as the case may be, may empower any Special Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class.*]

NOTES

Criticism of system of Honorary Magistrates.—Sections 13 and 18 deal with the appointment of special Judicial/Metropolitan Magistrates. These correspond to section 14 of the old Code. It was under the latter section that Honorary Magistrates could be appointed. The Joint Committee of Parliament took note of the widespread criticism of the working of the system of Honorary Magistrates, particularly of the Benches. It observed :

“The justification that is usually given for the system of appointing Honorary Magistrates is that it helps in giving relief to the stipendiary Magistracy by disposing of a large number of petty criminal cases, particularly in the larger towns. In the Committee’s view the proper way to deal with arrears will be to appoint sufficient number of stipendiary Magistrates. However, the Committee is convinced that the deletion of the enabling provision for appointment of Special Magistrates would create problems, as happened in the Union territory of Delhi recently. In certain States, the practice of appointing retired government officers as Special Magistrates, sitting singly to dispose of petty cases has been adopted with advantage. These Magistrates, who are usually invested with summary powers, are able to dispose of a large number of petty cases with expedition. An enabling provision in this behalf is necessary as it may facilitate the appointment of such special magistrates for disposing of petty cases. The enabling provision would also be useful in another way. In remote or inaccessible localities or areas with thin population, the available work may not justify the appointment of a full time Magistrate. In such situations there is a practice in some States to confer the powers of a Magistrate on a local officer of Government, like the Sub-registrar, to dispose of the few criminal cases arising in such areas. This will be a facility to the local inhabitants who otherwise would have to travel a long distance to reach a Magistrate’s court.

Modification of the system.—The Committee, after careful consideration, is of the view that the enabling power to appoint Special Magistrates should be retained; both in the Metropolitan areas and elsewhere, with the following modifications :

- a. The system of appointing Benches of Magistrates should be abolished [old section 15].
- b. The persons to be appointed as Special Magistrates should be either persons in government service or those who have retired from Government service.
- c. The High Court should have power to prescribe qualifications or experience in relation to legal affairs, to be satisfied by a person before he is appointed as a Special Magistrate.
- d. The appointment should be made by the High Court and should be for a period not exceeding one year at a time.

- e. The sentencing powers of a Special Magistrate should correspond to the powers of a Second Class Magistrate.

Territorial jurisdiction of Special Metropolitan Magistrate.—Section 18 has been amended by the Amendment Act, 1978, to bring it in line with the amendments made in section 13.

The High Court/State Government has been authorised under the substituted sub-section (3), to empower a Special Metropolitan Magistrate to exercise powers of a Judicial Magistrate in any area outside his local jurisdiction.

Subordination of Metropolitan Magistrates.

19. (1) The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge ; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.

(2) The High Court may, for the purposes of this Code, define the extent of the subordination, if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

(3) The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.

NOTES

This section is on the same lines as section 15 of the old Code in respect of subordination of Judicial Magistrates.

Executive Magistrates.

20. (1) In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have [such] of the powers of a District Magistrate under this Code or under any other law for the time being in force [,as may be directed by the State Government].

(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires ; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

(5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

Special Executive Magistrates.

21. The State Government may appoint, for such term as it may think fit. Executive Magistrates, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit.

Local jurisdiction of Executive Magistrates.

22. (1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrate may exercise all or any of the powers with which they may be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

Subordination of Executive Magistrates.

23. (1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

NOTES

Executive Magistrates.—Sections 20 and 21 provide for the appointment of the Executive Magistrates (*i.e.*, the District Magistrate, Sub-divisional Magistrate and other Executive Magistrates) and Special Executive Magistrates. Sections 22 and 23 provide for local jurisdiction and subordination of the Executive Magistrates. These are as a consequence of the separation of the Judiciary from the Executive. The provisions are analogous to sections 10, 11, 12, 13 and 17 of the old Code.

Important features.—Two important features may, however, be noted. Sub-section (5) of section 20 preserves the powers of the State Government under the relevant Police Act to confer on the Commissioner of Police powers of an Executive Magistrate. The second feature is that on the lines of special Judicial and special Metropolitan Magistrates, section 21 empowers the State Government to appoint special Executive Magistrates. On this point, the Joint Committee of Parliament observed :

“A provision is necessary to enable the appointment of special Executive Magistrates to meet special needs in relation to particular areas or for the performance of particular duties.”

Powers of Executive Magistrates.—Sub-section (2) of section 20, as it was worded, was susceptible to difficulties in the interpretation. The words ‘all or any of the powers of a District Magistrate’ gave the impression that once an Executive

Magistrate was appointed to be an Additional District Magistrate, such Magistrate gets invested with all the powers of the District Magistrate. Sub-section (2) has, therefore, been amended by the Amendment Act, 1978, to clarify that only such powers of the District Magistrate shall be exercisable by the Additional Magistrate under this section as may be directed by the State Government.

[Public Prosecutors.]

24. (1) *For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.*

(2) *The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district or local area.*

(3) *For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:*

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) *The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.*

(5) *No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).*

(6) *Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre :*

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate, under sub-section (4).

(7) *A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.*

(8) *The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.*

(9) *For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional*

Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.]

NOTES

Method of appointment of Public Prosecutors.—Section 24, which corresponds to section 492 of the old Code dealing with the appointment of Public Prosecutors, has been recast by the Amendment Act, 1978—

- a. to enable the Central Government and State Government to appoint one or more Additional Public Prosecutors for the High Court ;
- b. to enable the Central Government to appoint one or more Public Prosecutors in any district or local area ;
- c. to enable counting of service rendered as Prosecuting Officer before or after coming into force of the Code of Criminal Procedure, 1973, as service as an advocate for the purpose of appointment as Public Prosecutor ; and
- d. to provide that in any State where there exists a regular cadre of Prosecuting Officers, appointment of Public Prosecutors or Additional Public Prosecutors will be made only from that cadre and when there are no suitable persons available appointment can be made from the panel prepared by the District Magistrate in consultation with the Sessions Judge.

Assistant Public Prosecutors.

25. (1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

[(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.]

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case :

Provided that a police officer shall not be so appointed—

- (a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted ; or
- (b) if he is below the rank of Inspector.

NOTES

Assistant Public Prosecutors independent of police.—Section 25 creates new office of Assistant Public Prosecutors for courts of Magistrates. Formerly there used to be police prosecutors. Sub-section (2) bars the appointment of police officers to this post. The object is frustrated if the officers are placed directly under the control of the Superintendent of Police, even though the State Government may retain the ultimate control over the public prosecutor by removing or dismissing him.

The proviso, read with sub-section (3), makes it clear that, in exceptional circumstances, the District Magistrate may appoint a police officer, who may not have taken part in the investigation of the offence for conducting a particular criminal case in the court of a Magistrate. Section 25 makes the legislative intent clear that the prosecuting agency should be free from the police department which is generally entrusted with the task of maintenance of law and order and prevention and investigation of crimes—*Jai Pal Singh Naresh v. State of U.P.* 1976 Cr. LJ 32.

Central Government's power to appoint Assistant Public Prosecutors.—Under the new Code, the Central Government had no power to appoint Assistant Public Prosecutors. The new sub-section (1A), inserted by the Amendment Act, 1978, empowers the Central Government also to appoint Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the courts of Magistrates, whenever necessary.

CHAPTER III POWER OF COURTS

Courts by which offences are triable.

26. Subject to the other provisions of this Code,—

- (a) any offence under the Indian Penal Code (45 of 1860) may be tried by—
 - (i) the High Court, or
 - (ii) the Court of Session, or
 - (iii) any other Court by which such offence is shown in the First Schedule to be triable ;
- (b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by—
 - (i) the High Court, or
 - (ii) any other Court by which such offence is shown in the First Schedule to be triable.

NOTES

This section combines the provisions of sections 28 and 29 of the old Code. Although the High Court does not try any case under its original criminal jurisdiction, a reference to the High Court is retained, since it “will continue to be relevant for the extremely rare, but possible exercise of the extraordinary criminal jurisdiction vested” in the High Court.

The illustration to old section 28 has been omitted as unnecessary in view of the doing away with the commitment proceedings.

Jurisdiction in the case of juveniles.

27. Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court

of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

NOTES

This section is substantially the same as section 29B of the old Code. The reference to the Reformatory Schools Act, 1897, contained in old section 29B, has been substituted by reference to Children Act, 1960.

The age-limit of a juvenile has also been raised from 15 years to 16 years "to fit in with the provision of the Children Act, 1960". The expression "custody, trial and punishment" occurring in the old provision has also been substituted by the expression "treatment, training and rehabilitation", as "it will be inappropriate to use the term 'punishment', in relation to children".

Sentences which High Courts and Sessions Judges may pass.

28. (1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law ; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

Sentences which Magistrates may pass.

29. (1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

Sentence of imprisonment in default of fine.

30. (1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law :

Provided that the term—

(a) is not in excess of the powers of the Magistrate under section 29 ;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which

the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 29.

Sentence in cases of conviction of several offences at one trial.

31. (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict ; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

Provided that—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years ;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

Mode of conferring powers.

32. (1) In conferring powers under this Code, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Powers of officers appointed.

33. Whenever any person holding an office in the service of Government who has been invested by the High Court or the State Government with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same State Government, he shall, unless the High Court or the State Government, as the case may be, otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

Withdrawal of powers.

34. (1) The High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under this Code on any person or by any officer subordinate to it.

(2) Any powers conferred by the Chief Judicial Magistrate or by the District Magistrate may be withdrawn by the respective Magistrate by whom such powers were conferred.

Powers of Judges and Magistrates exercisable by their successors-in-office.

35. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office.

(2) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge.

(3) When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate.

NOTES

Sentencing powers of Magistrates.—Sections 28 to 35 correspond respectively to sections 31 to 33, 35, 39 to 41 and 559 of the old Code.

The sentencing powers of Magistrates are now as follows :—

- | | |
|---|--|
| a. Court of Chief Judicial Magistrate and Chief Metropolitan Magistrate : | Imprisonment up to 7 years ; fine without limit. |
| b. Court of Magistrate of the First Class and Metropolitan Magistrate : | Imprisonment up to three years as against two years under the old Code ; fine up to Rs. 5,000 as against Rs. 2,000 previously. |
| c. Court of Magistrate of the Second Class : | Imprisonment up to one year as against six months under the old Code ; fine up to Rs. 1,000 as against Rs. 500 previously. |

Law Commission's views on sentencing powers of Magistrates.—In regard to sentencing powers of the Chief Judicial Magistrate, the Law Commission observed :

“He (the CJM) would naturally be a senior and experienced Magistrate who could be safely entrusted with the power to impose punishment up to seven years' imprisonment.....After the separation of the executive from the judiciary, there would not be any objection to such a Magistrate trying serious cases and awarding sentences up to seven years simply because he is designated as a Magistrate.”

In regard to sentencing powers of other magistrates, the Commission observed :

“When the separation of the Judiciary from the Executive is fully effected, a great majority of magistrates will be legally qualified and trained members of the judiciary who can be entrusted with somewhat higher sentencing powers than they now have.”

No provision for III Class Magistrates.—No provision has been made for third class magistrates. They have been done away with. The reference to solitary confinement in the old Code has also been omitted as “such confinement is no longer in vogue”. Further, under the new Code, a magistrate derives powers directly on his appointment as such. Hence, the old provision contained in section 37 regarding investing magistracy with additional powers by notification has been deleted.

Mention of High Court in Sections 32-34.—As could be seen, in sections 32, 33 and 34 which deal with the conferment, continuance and cancellation of powers, a reference to the High Court has been made in addition to the State Government, since in many places in the Code the High Court has been made the authority for conferring powers in judicial matters.

CHAPTER IV.

A. POWERS OF SUPERIOR OFFICERS OF POLICE

Powers of superior officers of police.

36. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

B. AID TO THE MAGISTRATES AND THE POLICE

Public when to assist Magistrates and police.

37. Every person is bound to assist a Magistrate or police officer reasonably demanding his aid—

- (a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest ; or
- (b) in the prevention or suppression of a breach of the peace ; or
- (c) in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

Aid to person, other than police officer, executing warrant.

38. When a warrant is directed to a person other than a police officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

NOTES

Sections 36 to 38 correspond to sections 551, 42 and 43 of the old Code respectively. They do not make any change in the existing law on the subjects of powers of superior police officers and aid to magistracy and police in regard to crimes.

Public to give information of certain offences.

39. (1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code; namely ;—

- (i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code) ;
- (ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code) ;
- (iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification) ;
- (iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.) ;
- (v) sections 302, 303 and 304 (that is to say, offences affecting life) ;
- (vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft) ;
- (vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity) ;
- (viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.) ;
- (ix) sections 431 to 439, both inclusive (that is to say, offences of mischief against property) ;
- (x) sections 449 and 450 (that is to say, offence of house-trespass) ;
- (xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house-trespass) ; and
- (xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes),

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section, the term “offence” includes any act committed at any place out of India which would constitute an offence if committed in India.

NOTES

Modifications made in the old Code.—The corresponding provision was section 44 of the old Code. The new section contains the following changes :—

(1) As the member of the public are not expected to be familiar with the numbers of the sections of the Indian Penal Code, a brief description of the various offences has been inserted in addition to the reference to the sections of the Indian Penal Code.

(2) The following offences have been added to the list contained in the old section :—

- i. offences relating to bribery and corruption ;
- ii. some of the anti-social offences, namely, those relating to adulteration of food and drugs, criminal breach of trust by public servants, mischief against property like roads, bridges, etc., and those relating to currency notes and bank notes.

Duty of officers employed in connection with the affairs of a village to make certain report.

40. (1) Every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may possess respecting—

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in or near such village ;
- (b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender ;
- (c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, section 144, section 145, section 147, or section 148 of the Indian Penal Code (45 of 1860) ;
- (d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person ;
- (e) the commission of, or intention to commit, at any place out of India near such village any act which, if committed in India, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, 231 to 238 (both inclusive), 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450, 457 to 460 (both inclusive), 489A, 489B, 489C and 489D ;
- (f) any matter likely to affect the maintenance or order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the State Government, has directed him to communicate information.

(2) In this section,—

- (i) “village” includes village-lands ;
- (ii) the expression “proclaimed offender” includes any person proclaimed as an offender by any Court or authority in any territory in India to which this Code does not extend, in respect of any act which if committed in the territories to which this Code extends, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450 and 457 to 460 (both inclusive) ;

- (iii) the words "officer employed in connection with the affairs of the village" means a member of the panchayat of the village and includes the headman and every officer or other person appointed to perform any function connected with the administration of the village.

NOTES

This section imposes certain special duties on village headmen, etc. It corresponds to section 45 of the old Code. The section has been made simpler and more intelligible than the old section.

CHAPTER V

ARREST OF PERSONS

When police may arrest without warrant.

41. (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—
- (a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned ; or
 - (b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ; or
 - (c) who has been proclaimed as an offender either under this Code or by order of the State Government ; or
 - (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing ; or
 - (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; or
 - (f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union ; or
 - (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India ; or
 - (h) who, being a released convict, commits a breach of any rule, made under sub-section (5) of section 356 ; or
 - (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110.

NOTES

Drafting changes in old provision.—This section deals with the law of arrest without warrant by a police officer. It corresponds to sections 54(1) and 55(1) of the old Code. No material change has been made in the *old* section. The drafting of the old sections has, however, been improved. For instance, (i) in clause (f) of sub-section (1), the words “any of the Armed Forces of the Union” have been used for the words “the Indian Army, Navy or Air Force” in the old section 54(1) so that the provision applies now “to the Armed Forces of the Union (besides the Army, Navy or Air Force), members of which are also liable to be found guilty of desertion, etc., under the relevant law”; (ii) in clause (i) of sub-section (1) the words “whether written or oral” have been added, to set at rest a controversy on the point as to whether the “requisition” received from the other police officer must be in writing before it can be acted —See *State v. Ram Chandra* AIR 1955 All. 438, and *Roshan Lal* AIR 1950 MB 83.

Arrest on refusal to give name and residence.

42. (1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

NOTES

This section is practically the same as section 57 of the old Code.

Arrest by private person and procedure on such arrest.

43. (1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42 ; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

NOTES

Verbal changes made in the old provision.—Although the provision of this section is the same as in section 59 of the old Code, some verbal changes have been made therein.

The words “or cause him to be arrested” have been added in sub-section (1) in view of the case law which had shown “an obscurity on the subject”. —See *Nazir v. Rex* AIR 1951 All. 3 ; *Fakiro v. Emp.* AIR 1947 Sind 107 ; *Graham v. Henri Gidney* AIR 1933 Cal. 708. Thus, the section expressly enables the private person not only to arrest the offender, but also “to cause him to be arrested”.

Again, the words “in his view” occurring in the old section 59(1) have been replaced by the words “in his presence” since the word “view” might also mean “opinion”. In suggesting this verbal change the Law Commission considered the decisions and observations contained in *Nazir v. Rex* (*ibid*) and *Gouri Prasad v. Chartered Bank* AIR 1925 Cal. 884.

Arrest by Magistrate.

44. (1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

NOTES

This section incorporates the provisions contained in sections 64 and 65 of the old Code without any change therein.

Protection of members of the Armed Forces from arrest.

45. (1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression “Central Government” occurring therein, the expression “State Government” were substituted.

NOTES

Immunity to members of Armed Forces.—When a member of the Armed Forces of the Union is deputed for the protection of public property in a State or for other such purposes, it may happen that one or more persons may do or attempt to do something in regard to which such member may be called upon to take action. Such action may expose him to the possibility of being arrested and prosecuted by the police. To meet such or similar situations, a qualified protection has been given to such member requiring the previous consent of the Central Government for the arrest of any such member. It has also been provided that the immunity granted to members of Armed Forces of the Union could also be extended to specific categories of members of the forces charged with the maintenance of public order in the States if the concerned State Government so desires.

Arrest how made.

46. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

Search of place entered by person sought to be arrested.

47. (1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub-section (1) it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the persons to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to

liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Pursuit of offenders into other jurisdictions.

48. A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.

No unnecessary restraint.

49. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

NOTES

Sections 46 to 49 do not make any change in the law as contained in the old Code. Section 46 corresponds to the provisions of old section 46. Section 47 consolidates the provisions contained in sections 47, 48 and 49 of the old Code. In passing, it may also be noted that section 48 (which corresponds to section 58 of the old Code) supplements, to some extent, a police officer's power to arrest under section 22 of the Police Act, 1861, which is limited only to arrest within the police district.

Person arrested to be informed of grounds of arrest and of right to bail.

50. (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

NOTES.

Requirements of the section.—This provision confers a facility on a person arrested without warrant. Sub-section (1) enjoins on a police officer or other person arresting any person without warrant to communicate to him immediately particulars of offence or other grounds for which he had been arrested. Under sub-section (2) the officer is also required to inform the arrested person of his right to be released on bail if the case against him is bailable.

Analogous provision in section 75.—It may be noted in this connection that under section 75 of the Code there is a somewhat similar provision which is confined to arrest under warrant. The provision of section 50 is, therefore, a beneficial one, to the person arrested without warrant.

Propositions laid down by the House of Lords.—It may, incidentally, be mentioned that the House of Lords (U.K.) in a case, considered at length the law of arrest without warrant in England. The judgment laid down the following propositions on the subject :

- a. If a policeman arrests without warrant on reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must, in ordinary circumstances inform the person arrested of the true grounds of arrest. He is not entitled to keep the reasons to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.
- b. If the citizen is not so informed, but is nevertheless seized, the constable, apart from certain exceptions, is liable for false imprisonment—*Christle v. Leachinsky* [1947] All. ER 567 (HL).

Mandatory nature of the provision.—The provisions of the section are material and mandatory and cannot be overlooked or non-complied with. The section is in conformity with article 22(1) of the Constitution, enabling the person arrested to move for habeas corpus to obtain his release. It is a valuable right and non-compliance with the mandatory provision amounts to non-compliance with the procedure established by law—*Govind Prasad v. State of West Bengal* 1975 Cr. LJ 1249.

Consequence of failure to comply with the provision.—Where the provisions of section 50 have not been complied with, the non-consideration by the court of such non-compliance, when considering the question of granting bail, works to the prejudice of the arrested person and the arrest is liable to be set aside on that ground—*Govind Prasad, ibid.*

When a person arrested without warrant alleges by affidavit that he was not communicated with full particulars of the offence leading to his arrest, in the face of such affidavit, the police diary cannot be perused to verify police officer's claim that he had communicated the facts orally. Even if such oral communication was made, it being not known whether full particulars were communicated, the arrest and detention of that person is illegal—*Ajit Kumar v. State of Assam* 1976 Cr. LJ 1303.

Search of arrested person.

51. (1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

NOTES

This section corresponds to sections 51 and 52 of the old Code. Although no change has been made in the law, the third paragraph of sub-section (1) is

intended "to ensure that the articles seized from an arrested person are properly accounted for". In other words a receipt for the seized articles will have to be furnished to the arrested person.

Power to seize offensive weapons.

52. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

Examination of accused by medical practitioner at the request of police officer.

53. (1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Explanation: In this section and in section 54, "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in a State Medical Register.

NOTES

Need of the provision.—This provision has been made for facilitating effective investigation and authorising an examination of the arrested person by a medical practitioner, if from the nature of the alleged offence or the circumstances under which it was alleged to have been committed, there is reasonable ground for believing that an examination of the person will afford evidence.

Law Commission's conclusions.—The Law Commission examined the question in detail from legal and constitutional points of view. Its conclusions may be summarised as follows :

a. *Whether such examination is legally permissible.*—Any interference with the body of a person is, *prima facie*, unlawful, and must justify itself under express rule of law. Sections 4 and 5 of the Identification of Prisoners Act, 1920, make provision for certain matters like taking of measurements, etc., of non-convicted persons, photographing, finger impressions, etc. ; but they do not extend to medical examination. The provision of the Prisoners Act is intended for the purpose of check-up of a prisoner for contagious diseases, etc., and not for investigation. Section 51 of the old Code also does not permit such examination without the consent

of the accused—*See, Bhondar v. Emp.* AIR 1931 Cal. 601 ; *Hanuman Sharma v. Emp.* AIR 1932 Cal. 723 ; *Deoman v. State* AIR 1959 Bom. 284.

- b. *Whether a provision if made, would be constitutionally valid.*—Article 20(3) of the Constitution relates to the testimony, written or oral, of the accused person, and, as has been observed by the Supreme Court in *Kathi Kalu v. State* AIR 1961 SC 1808 does not bar the examination of the accused person, even if force is used for the purpose. *Kathi Kalu's* case should be taken as overruling the view taken in *Brij Bhushan v. State* AIR 1957 MB 106 and *N.D.N. Pakuthy* AIR 1950 TC 5 invalidating provisions similar to section 5 of the Identification of Prisoners Act, 1920. Hence, a provision permitting examination seems to have a fair chance of passing the scrutiny by courts under article 20(3) of the Constitution.
- c. *Whether such examination is desirable.*—Such a provision is needed, as examination of the body would reveal valuable evidence. The examination may take various shapes, e.g.,
 - i. examination of the body for ascertaining the accused person's parts in a sexual offence, or for finding out the injuries received by him ;
 - ii. examination for identification marks ;
 - iii. examination of internal parts, taking of fluids (e.g., in intoxication cases) and so on.

Position in England and U.S.A.—The position in U.K. and U.S.A. may also be referred to, so that the significance of section 53 is better appreciated.

In England. “without the consent of a prisoner, a judge or a magistrate has no power to order an examination of his person, and if in pursuance of such an order an examination is made, the person who made the order and the person who makes the examination are guilty of an assault”—Halsbury, 3rd Edn., Vol. 10, page 742, para 1425.

In U.S.A., “influenced by the historical development of the doctrine (non-testimonial evidence) its purpose, and the need to balance the conflicting interests of the individual and society, the courts have generally restricted the protection of the Fifth Amendment to situations where the defendant would be required to convey ideas, or where the physical acts would offend the decencies of the civilised conduct.”

Incidentally it may also be mentioned that the provision in section 53 is based on the second part of section 259 of the Criminal Code of Queensland (Australia), as suitably adapted.

Extent of examination.—*Whether blood can be taken for examination :* There is no reason for holding that ‘examination of a person’ should mean only the examination of the skin or what is only visible on the body. If it is necessary to make an examination of any organ inside the body for the purpose of establishing a person's guilt or innocence, that is also permitted. There is nothing repulsive or shocking to conscience in taking the blood of the accused person in establishing his guilt. So far as the question of causing hurt is concerned, even causing of some pain may technically amount to hurt as defined by section 319 IPC. But pain might be caused even if the accused is subjected to a forcible medical examination. The law permits the use of necessary force. It cannot, therefore, be said that merely because some pain is caused, such a procedure should not be permitted. The provision of law

as embodied in the Code fully cover such a procedure and although there is no specific provision, yet the taking of blood for the aforesaid purpose is warranted by the provision of law—*Jamshed v. State of U.P.* 1976 Cr. LJ 1680.

Examination of arrested person by medical practitioner at the request of the arrested person.

54. When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

NOTES

Intention of the section.—It has been observed by the Joint Committee of Parliament :

“A person who is arrested should be given the right to have his body examined by a medical officer when he is produced before a Magistrate or at any time when he is under custody, with a view to enabling him to establish that the offence with which he is charged was not committed by him or that he was subjected to physical injury. In the view of the Committee a person in custody is in need of this protection.” The section is intended to give that protection.

Procedure when police officer deposes subordinate to arrest without warrant.

55. (1) When any officer in charge of a police station or any police officer making an investigation under Chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) Nothing in sub-section (1) shall affect the power of a police officer to arrest a person under section 41.

NOTES

Relationship between sections 41 and 55.—Sub-section (2) has been added to old section 55 by way of clarification that the general power to make arrest under section 41 is not affected. In fact, sub-section (2) re-states the law laid down in judicial decisions as properly understood, and is intended to obviate unnecessary controversy.

As to the relationship between sections 41 and 55, it may be stated, with reference to the judicial decisions on old sections 54 and 55, that where a police officer acts on a requisition sent to him under section 55, his powers are naturally confined by that section. But where the police officer is in *independent possession* of information, and purports to act under section 41, his action is legal—See *Sulaiman v. State of Kerala* AIR 1964 Ker. 185 and *Gurcharan Kaur v. Province of Madras* AIR 1942 Mad. 539.

Person arrested to be taken before Magistrate or officer in charge of police station.

56. A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Person arrested not to be detained more than twenty-four hours.

57. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Police to report apprehensions.

58. Officers in charge of police stations shall report to the District Magistrate or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Discharge of person apprehended.

59. No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Power, on escape, to pursue and retake.

60. (1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

(2) The provisions of section 47 shall apply to arrests under sub-section (1) although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

NOTES

Sections 56 to 60 correspond to and are the same in substance as sections 60 to 63 and 66-67 of the old Code, respectively.

CHAPTER VI
PROCESSES TO COMPEL APPEARANCE

A. Summons

Form of summons.

61. Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

Summons how served.

62. (1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

NOTES

While section 61 corresponds to old section 68(1), sub-sections (1), (2) and (3) of section 62 correspond to and are substantially the same as sections 68(2), 69(1) and 69(2) of the old Code respectively.

Service of summons on corporate bodies and societies.

63. Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Explanation : In this section, "corporation" means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

NOTES

Registered societies.—This section corresponds to the old section 69(3). The *Explanation* has been added to bring the registered societies also within the purview of the section. As observed by the Law Commission :

".... societies registered under the Societies Registration Act, 1860, although not formally incorporated, possess some of the attributes of a corporation and it is desirable that such societies should be treated on par with a corporation in criminal proceedings."

Service when persons summoned cannot be found.

64. Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for

him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Explanation : A servant is not a member of the family within the meaning of this section.

NOTES

Analogous provision in the CPC.—Under old section 70 to which section 64 corresponds, it was provided that in a presidency town, the summons might also be served by leaving it with the servant residing with the person concerned. But as observed by the Law Commission, “there is no such provision in the Code of Civil Procedure, and, having regard to changed social conditions, this provision should not continue.” The provision in section 64 has, therefore, been made to correspond to Order 5, Rule 15 of the Code of Civil Procedure, 1908 as it stood prior to the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976). Under the amended Rule 15 of Order 5 of that Code, it has now been provided that the service of summons may be effected, in the circumstances mentioned in the rule, on any adult member of the family, *male or female*. Section 64 of the Code of Criminal Procedure, however, still requires the service of summons to be made by leaving one of the duplicates with some adult *male member* of the family of the person who, when summoned, cannot be found.

Procedure when service cannot be effected as before provided.

65. If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides ; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

NOTES

Provision in line with CPC provision.—The section (which corresponds to old section 71) has been brought in line with the corresponding provision in Order 5, Rule 19 of the Code of Civil Procedure, 1908 and, therefore, for the words “and thereupon the summons shall be deemed to have been duly served,” occurring in the old section, the following words have been substituted : “and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper”.

Service on Government servant.

66. (1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed ; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

NOTES

This section corresponds to section 72 of the old Code with the omission of the reference to "a Railway Company" which has practically ceased to exist.

Service of summons outside local limits.

67. When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

Proof of service in such cases and when serving officer not present.

68. (1) When a summons issued by a Court is served outside its local jurisdiction, and in any case where the Officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

NOTES

Sections 67 and 68 correspond to sections 73 and 74 of the old Code, respectively, without any change.

Service of summons on witness by post.

69. (1) Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

(2) When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served.

NOTES

Need of the provision.—Under the old Code, service by post was not considered valid—*Cf. Gurnam Singh v. Mt. Datto* AIR 1950 EP 20. Section 69, therefore, contains a new provision intended to avoid some delay in the service of summons on witnesses. It provides for service of such summons by post in addition to, or simultaneously with, the issue of summons in the usual way by messenger. It may be noted that the postal service is confined only to witnesses. It cannot be adopted for summoning the accused.

B. Warrant of arrest**Form of warrant of arrest and duration.**

70. (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Power to direct security to be taken.

71. (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

(a) the number of sureties ;

(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound ;

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

NOTES

Sections 70 and 71 correspond to sections 75 and 76 of the old Code respectively without any change of substance therein.

Warrants to whom directed.

72. (1) A warrant of arrest shall ordinarily be directed to one or more police officers ; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

NOTES

This section corresponds to section 77 of the old Code. The requirement in the old section 77 that in a presidency town the warrant should be directed only to a police officer has been omitted in the new section.

Warrant may be directed to any person.

73. (1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of

any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

NOTES

Improvement on old section.—Section 78 of the old Code conferred a power on the DM and SDM to issue a special type of warrant to a landholder, etc., for the arrest of an escaped convict, proclaimed offender or person who had been accused of a non-bailable offence and who had “eluded pursuit”. This power has now been conferred on the Chief Judicial Magistrate and all Magistrates of the first class. The other improvements made in the section are :

- i. The words “landholder, farmer or manager of land” occurring in the old section have been substituted by the word “person”.
- ii. The words “of any person” used in the latter part of new sub-section (1) makes it clear that the two clauses “who has been accused of a non-bailable offence” and “is evading arrest” are intended to qualify only persons other than escaped convicts and proclaimed offenders.
- iii. The words “eluded pursuit” being not very apt in the context, have been substituted by the words “is evading arrest”.

Warrant directed to police officer.

74. A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notification of substance of warrant.

75. The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

NOTES

Sections 74 and 75 correspond to sections 79 and 80 of the old Code respectively.

Person arrested to be brought before Court without delay.

76. The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person :

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

NOTES

Old provision slightly modified.—Section 76 corresponds to section 81 of the old Code. It may be noted here that under new sections 56 and 57, a person arrested without warrant has to be taken before a Magistrate “without unnecessary delay”, and cannot be detained for more than twenty-four hours. The Supreme Court, in *State of Punjab v. Ajaib Singh* AIR 1953 SC 10 has held that when an arrest has been made on a warrant, the judicial mind has already been applied to the need for arrest of a person and hence there is no necessity for providing any safeguards like production before a Magistrate within twenty-four hours, etc., in absolute terms unlike arrests *sans* warrant. Hence, the Law Commission considering old section 81, in the light of article 22 of the Constitution, opined that “it is unnecessary to disturb the language of the section”. As a matter of further precaution, however, a proviso has been added so that no delay of more than twenty-four hours occurs in producing the arrested person before the Magistrate.

Where warrant may be executed.

77. A warrant of arrest may be executed at any place in India.

Warrant forwarded for execution outside jurisdiction.

78. (1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed ; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81, to decide whether bail should or should not be granted to the person.

NOTES

Sections 77 and 78 correspond to sections 82 and 83 of the old Code respectively. Sub-section (2) of section 78 has been added to require the court issuing the warrant to send the substance of information and documents, if any, to the court before which the arrested person is to be produced to enable it to decide whether a bail should or should not be granted. See also Notes under section 81 *infra*.

Warrant directed to police officer for execution outside jurisdiction.

79. (1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the

warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

Procedure on arrest of person against whom warrant issued.

80. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.

NOTES

Sections 79 and 80 correspond to sections 84 and 85 of the old Code respectively.

Procedure by Magistrate before whom such person arrested is brought.

81. (1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court :

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant :

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.

NOTES

Views of the Joint Committee of Parliament.—This section corresponds to section 86 of the old Code with the difference that the second proviso has been added to sub-section (1). The Joint Committee of Parliament has observed :

“Under the present provision* where a warrant of arrest is sent to a place outside the local jurisdiction of a Magistrate, for execution, the arrested person has necessarily to be transported in custody to the Magistrate issuing the warrant before he can claim to be released on bail. The Committee feels that this results in considerable hardship and inconvenience to persons arrested far away from the court issuing the warrant of arrest. To remove such hardship and inconvenience, the Committee has amended these clauses** conferring power on the Magistrate having jurisdiction over the place of arrest to release the person on bail subject to the other provisions of the Code relating to bail. To enable such Magistrate to consider whether bail should be granted, it has further been provided in clause 78† that the Magistrate issuing a warrant should also forward along with the warrant the substance of the information together with relevant documents.”

Scope of provision.—Under old section 86, when a warrant of arrest in a non-bailable case was sent to a place outside the local jurisdiction of the Magistrate for execution, the person arrested could only be released by the Magistrate, who issued the warrant. This hardship has now been eliminated by empowering the CJM and the Sessions Judge in case of a non-bailable offence and the Magistrate or the District Superintendent or Commissioner of the District in which arrest is made, to release him on bail. Hence where the accused-petitioner, who was arrested without warrant in Calcutta by the Ludhiana Police with the help of the Calcutta Police and was produced before the Additional Chief Metropolitan Magistrate, Calcutta, prayed for bail, it was held that the Addl. CMM had the power to grant the bail as a Magistrate having jurisdiction over the place of arrest to release the person on bail.

The words ‘subject to the provisions herein contained as to bail’ in section 56 clearly make the provision of Chapter XXXIII of the Code (re.and bonds) applicable to such cases and bring the position on par with that enjoined under section 81. The power to grant bail is unequivocally envisaged in section 78 read with section 81. The relevant provisions of bail in the Code are wide enough and any circumscribed interpretation thereof would not only be retrograde but also *de hors* the intention of the legislature—*Govind Prasad v. State of West Bengal* 1975 GJL 1249.

C. Proclamation and attachment

Proclamation for person absconding.

82. (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows :—

(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides ;

* Section 86 of the old Code.

** Now sections 78 and 81.

† Now section 78.

- (b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village ;
 - (c) a copy thereof shall be affixed to some conspicuous part of the Court-house ;
 - (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.
- (3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

NOTES

This section corresponds to section 87 of the old Code. A provision enabling the court to order the proclamation to be published in a local daily newspaper, in addition to other modes described in clause (i) of sub-section (2), as an optional mode where the court thinks fit, has been made in clause (ii) of sub-section (2).

Connotation of 'reason to believe'.—In *K.T.M.S. Abdul Cader v. Union of India* AIR 1977 Mad. 386, the court has observed that the expression 'reason to believe' occurring in sub-section (1) seems to suggest that the Magistrate acting under section 82 must be subjectively satisfied that the person against whom a detention order has been passed has absconded or has concealed himself on the materials before him as the Code does not set out any criterion on the basis of which the conclusion about the person's absconding or concealment should be arrived at. As has been pointed out in *Easwaramurthi v. Emperor* AIR 1944 PC 54, 'reason to believe' that one has absconded does not mean 'factually absconded'. Therefore, the magistrate acting under section 82 has to form an opinion on the Materials before him that the person sought to be detained has absconded or concealed himself without necessarily finding that the person has in fact absconded.

Abscond—Meaning of.—The primary meaning of the word 'abscond' is to hide and when a person is hiding from his place of residence, he is said to abscond. A person may hide even in his place of residence or away from it and in either case he would be absconding when he hides himself. In Wharton's Law Lexicon, 14th Edn., 'abscond' has been taken to mean to fly the country in order to escape arrest for crime. Therefore, persons who get scent of the action to be taken by the detaining authorities and leave the country in order to escape the arm of the law can be said to abscond. Similarly persons who have already left the country without the knowledge of any action to be taken against them under the law, but who continue to remain outside the country with a view to avoid any detention order that may be passed can also be taken to be absconding. It cannot be disputed that a person committing an offence in a particular country would ordinarily be liable to be tried according to the law of that country. If he leaves the country with a view to avoid or escape the arm of the law, he can be said to abscond so far as that country and its laws are concerned. In Chamber's Twentieth Century Dictionary, the word 'abscond' has been defined as to hide or to quit the country in order to escape a legal process.

Therefore, if a person, before the legal process would be issued, somehow or other comes to know of the issue of such a process or anticipates the issue of the process and quits the country, he can be said to have absconded—*K.T.M.S. Abdul Cader v. Union of India* AIR 1977 Mad. 386.

Attachment of property of person absconding.

83. (1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person :

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,—

- (a) is about to dispose of the whole or any part of his property, or
- (b) is about to remove the whole or any part of his property from the local jurisdiction of the Court,

it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made ; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

- (a) by seizure ; or
- (b) by the appointment of a receiver ; or
- (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf ; or
- (d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government be made through the Collector of the district in which the land is situate, and in all other cases—

- (a) by taking possession ; or
- (b) by the appointment of a receiver ; or
- (c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf ; or
- (d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

NOTES

Simultaneous proclamation and attachment in certain cases.—This section corresponds to sub-sections (1) to (6) of section 88 of the old Code. The proviso to sub-section (1) is new. On this the Joint Committee of Parliament has observed :

“The existing provision permits the issue of an order of attachment of property simultaneously with the issue of proclamation. This may result in hardship in some cases where the person concerned, even before he comes to know of the issue of the proclamation, finds his property being attached suddenly. At the same time the Committee cannot shut its eyes to the fact that if prior notice is insisted on in all cases, the purpose would be defeated in some cases as the property would be secreted. The appropriate course, in the opinion of the Committee, would be to provide that an order of attachment should be capable of being issued simultaneously with the proclamation in certain special circumstances, *e.g.*, when the absconding person is about to dispose of his property. Sub-clause (1) has, therefore, been amended with a view to providing for the simultaneous issue of proclamation and attachment in certain special circumstances.”

Claims and objections to attachment.

84. (1) If any claim is preferred to, or objection made to the attachment of, any property attached under section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part :

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub-section (2) of section 83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made :

Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute ; but subject to the result of such suit, if any, the order shall be conclusive.

NOTES

Additional protection of section.—This section corresponds to sub-sections (6A) to (6D) of section 88 in the old Code. It may be noted that warrants of

attachment issued under section 83(2) should be endorsed by the District Magistrate (who is Executive Magistrate) of the district in which the property is situated ; but the claims or objections against such attachment should be disposed of by the Chief Judicial Magistrate of that district under sub-section (2). This is an additional protection given to aggrieved person ; his right of suit for the property having been also preserved under sub-section (4).

Release, sale and restoration of attached property.

85. (1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government ; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 84 has been disposed of under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner ; in either of which cases the Court may cause it to be sold whenever it thinks fit.

(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

Appeal from order rejecting application for restoration of attached property.

86. Any person referred to in sub-section (3) of section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first-mentioned Court.

NOTES

Sections 85 and 86 correspond to sections 88(6E) and 405 of the old Code respectively.

D. Other rules regarding processes

Issue of warrant in lieu of, or in addition to, summons.

87. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons ; or

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- (b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

NOTES

Section 87 corresponds to section 90 of the old Code.

Power to take bond for appearance.

88. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.

NOTES

Old section 91 to which present section 88 corresponds has been amended so as to give power to a court to require execution of a bond in such terms as could make it obligatory for the person to either appear in the court which took the bond or "in any other court to which the case may be *transferred* for trial". [See also Notes under section 446 *infra*.]

Arrest on breach of bond for appearance.

89. When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions of this Chapter generally applicable to summonses and warrants of arrest.

90. The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

NOTES

Sections 89 and 90 correspond to sections 92 and 93 of the old Code respectively.

CHAPTER VII

PROCESSES TO COMPEL THE PRODUCTION OF THINGS

A. Summons to produce

Summons to produce document or other thing.

91. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession

or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

NOTES

Scope of provision.—It has been held by the Supreme Court in *State of Gujarat v. Shyam Lal* AIR 1965 SC 1257, that the section (old section 94 to which the present section corresponds) does not apply to the accused. No change has, therefore, been made in the section to codify the interpretation of the Supreme Court. Only one change has been effected in the section. In sub-section (3)(a), it has been made clear that the provisions of the Bankers' Books Evidence Act, 1891, override the general provisions of the section.

Procedure as to letters and telegrams.

92. (1) If any document, parcel or thing in the custody of a postal or telegraph authority is, in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing to such person as the Magistrate or Court directs

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, whether Executive or Judicial, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authority, as the case may be, to cause search to be made for and to detain such document, parcel or thing, pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub-section (1).

NOTES

Changes in old provision.—This section corresponds to section 95 of the old Code with two changes made therein :

- a. Reference to "Chief Presidency Magistrate" in old sub-section 95(1) has been replaced by "Chief Judicial Magistrate" which expression, in a Metropolitan area, means the Chief Metropolitan Magistrate [see section 3(1)(d)].
- b. The power to order delivery of postal articles has been given under sub-section (2) to the Chief Judicial Magistrate instead of to the District Magistrate.

*B. Search-warrants***When search-warrant may be issued.**

93. (1) (a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b) where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

NOTES

Sub-section (1) corresponds to section 96(1), sub-section (2) corresponds to section 97 and sub-section (3) to section 96(2) of the old Code. No material changes have been made in the old sections except that the reference to Chief Metropolitan Magistrate has been replaced by the reference to Chief Judicial Magistrate.

Search of place suspected to contain stolen property, forged documents, etc.

94. (1) If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place,

(b) to search the same in the manner specified in the warrant,

(c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies,

(d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety,

- (e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies.
- (2) The objectionable articles to which this section applies are—
- (a) counterfeit coin ;
 - (b) pieces of metal made in contravention of the Metal Tokens Act, 1889 (1 of 1889), or brought into India in contravention of any notification for the time being in force under section 11 of the Customs Act, 1962 (52 of 1962) ;
 - (c) counterfeit currency note ; counterfeit stamps ;
 - (d) forged documents ;
 - (e) false seals ;
 - (f) obscene objects referred to in section 292 of the Indian Penal Code (45 of 1860) ;
 - (g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

NOTES

Enumeration of objectionable articles.—This section corresponds to section 98 of the old Code. No basic change has been made in the general provisions of that section by the new Code. The section has, however, been redrafted and objectionable articles have been enumerated in sub-section (2). In that list is included counterfeit currency notes. Moreover, the reference to Presidency Magistrate occurring in the old provision has been replaced by reference to Magistrate of the first class.

Power to declare certain publications forfeited and to issue search-warrants for the same.

95. (1) Where—

- (a) any newspaper, or book, or
- (b) any document,

wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In this section and in section 96,—

- (a) “newspaper” and “book” have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867) ;

- (b) "document" includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96.

NOTES

Modifications in the old provisions.—The provisions contained in this section correspond to those contained in sections 99A(1) and (2) and 99G of the old Code with the following modifications :

- a. Sub-section (1) of the old section 99A, which was cumbrously worded, has been shortened by omitting the description of the offences under the specified sections of the IPC as it was redundant.
- b. Publications in respect of the following additional matters which are offences under the IPC have been brought within the purview of the section :
 - i. section 153B (imputations prejudicial to national integration) which is a new offence created by Criminal Law (Amendment) Act, 1972 (Act 31 of 1972) ;
 - ii. sections 292 and 293 (obscene books and objects), "in order to check the growing evil of obscenity".

Sine qua non requirement of the section.—As has been observed in *P. Hemalatha v. Government of Andhra Pradesh* AIR 1976 AP 375, the grounds of opinion for coming to the conclusion that the publication of the matter contained in the journal sought to be forfeited by an order under section 94, is punishable under section 124A IPC, is an integral part of section 95 and compliance with its requirement is a *sine qua non* for the validity of the notification. It is not enough merely to reproduce the language of section 124A IPC without specifying as to how or in what manner there has been contravention of the provisions of that section. If the book does contain such objectionable matter publication of which would be punishable under section 124A IPC or other sections referred to in section 95, the Government has the right to declare the publication forfeited. The mere fact that in the order it is also mentioned that the subject-matter is prejudicial to the maintenance of harmony it would not make the matter anytheless objectionable if it is in fact objectionable under any of the sections.

Supreme Court on old section 99A.—It will be of interest to note here that the Supreme Court has in *State of U.P. v. Lalai Singh Yadav*, AIR 1977 SC 202 interpreting the old section 99A, held that a formal authoritative setting forth in an order or notification of grounds and reasons for the forfeiture of a book or any publication is statutorily mandatory under the Code. This conclusion establishes a constitutional rapport between the penal section 99A of the Code and the Fundamental Right of Expression under article 19 of the Constitution. The Court has observed :

"The Government has the power and responsibility to preserve societal peace and to forfeit publications which endanger it. But what is thereby prevented is the freedom of expression, that promotor of the permanent interests of human progress. Therefore, the law [section 99A] fixes the mind of the administration

to the obligation to reflect on the need to restrict and to state the grounds which ignite its action. To fail here, is to fault the order (of forfeiture)."

Referring to the omission of the U.P. Government to give the grounds for the forfeiture of a book, the judgment said :

"If you laze and omit, the law visits the order with voidness and this the State Government must realise specially because forfeiture of a book for a penal offence, is a serious matter, not a routine act to be executed with unconcern or indifference. The wages of neglect is invalidity, going by the text of the Code.

These considerations are magnified in importance when we regard the change-over from the *Raj* to the Republic and the higher value assigned to the great rights of the people.

Section 99A of the Code enables the aggrieved party to apply to the High Court to set aside the prohibitory order and the Court examines the grounds of Government order and affirms or upsets it. The Court cannot make a roving enquiry beyond the grounds set forth in the order and if grounds are altogether left out what is the Court to examine ? And by this omission careless or calculated, the valuable right of the appeal to the Court is defeated. A construction of the section, fraught with such pernicious consequences and tampering with the basic structure of the statutory remedy must be frowned upon by the Court, if the liberty to publish is to be restricted only to the limited extent the law allows."

Application to High Court to set aside declaration of forfeiture.

96. (1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under section 95, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in sub-section (1) of section 95.

(2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court.

(3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made.

(4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub-section (1) of section 95, set aside the declaration of forfeiture.

(5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

NOTES

Clarificatory changes in old section.—This section incorporates the provisions contained in sections 99B, 99C, 99D and 99E of the old Code. Only two changes of clarificatory nature have been made in the old section. They are—

- a. It has been made clear in sub-section (1) that the period of limitation for application to the High Court to set aside declaration of forfeiture will commence from the date of publication of the declaration in the Official Gazette ; and
- b. In sub-section (2), a provision has been made to meet a contingency where the High Court does not have three or more judges to constitute a Special Bench to consider the application (for instance, Judicial Commissioner's Court for Goa).

Search for persons wrongfully confined.

97. If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined ; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Power to compel restoration of abducted females.

98. Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

NOTES

Sections 97 and 98 incorporate the provisions contained respectively in sections 100 and 552 of the old Code. No change has been made therein except that reference to Presidency Magistrate in the old sections has been replaced by reference to Magistrate of the first class.

C. General provisions relating to searches

Direction, etc., of search-warrants.

99. The provisions of sections 38, 70, 72, 74, 77, 78 and 79 shall, so far as may be, apply to all search-warrants issued under section 93, section 94, section 95 or section 97.

Persons in charge of closed place to allow search.

100. (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall,

on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses ; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

Disposal of things found in search beyond jurisdiction.

101. When, in the execution of a search-warrant at any place beyond the local jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate ; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

D. Miscellaneous

Power of police officer to seize certain property.

102. (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

[(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.]

Magistrate may direct search in his presence.

103. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Power to impound document, etc., produced.

104. Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

NOTES

Changes in old provisions.—Sections 99 to 104 contain general and miscellaneous provisions in regard to searches, etc. They repeat in substance the provisions contained in sections 101, 102 and 103, 99, 550, 105 and 104 respectively. Some changes have, however, been made in section 100 by the Joint Committee of Parliament. They are :

- a. The original sections 102 and 103 of the old Code have been combined into a single section for convenience as they related to the same matter.
- b. With a view to ensuring that the witnesses for the search are disinterested persons, the word “independent” has been inserted in sub-section (4).
- c. The previous provisions which required that the witnesses should be inhabitants of the locality of the place of search had created difficulties. It has accordingly been provided that the witnesses may be of any other locality if respectable and independent inhabitants of the locality are not available, or are not willing to be witnesses to the search.

Insertion of new sub-section (3) in section 102.—New sub-section (3) inserted by the Amendment Act, 1978, firstly provides that the police officer shall forthwith report the seizure of any property under sub-section (1) to the Magistrate and secondly gives effect to the observations of the Supreme Court made in *Anwar Ahmed v. State of U.P.* AIR 1976 SC 680 that the police should be given the power to get a bond from the person to whom the property seized is entrusted, particularly in cases where a bulky property like elephant or car is seized and the Magistrate is living at a great distance and it is difficult to produce the property seized before him.

Reciprocal arrangements regarding processes.

105. (1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that—
- (a) a summons to an accused person, or
 - (b) a warrant for the arrest of an accused person, or

- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search-warrant,

issued by it shall be served or executed at any place within the local jurisdiction of a Court in any State or area in India outside the said territories, it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed ; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories.

(2) Where a Court in the said territories has received for service or execution—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing or to produce it, or
- (d) a search-warrant,

issued by a Court in any State or area in India outside the said territories, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for services or execution within its local jurisdiction ; and where—

- (i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 80 and 81,
- (ii) a search-warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 101.

NOTES

Modification in the old provision.—Section 105A of the old Code to which the present section corresponds contained the words “a court in the State of Jammu & Kashmir or a court established or continued by the authority of the Central Government in any area outside the said territories”. The last-mentioned category of courts were those few courts established or continued under the Foreign Jurisdiction Act, 1947. Since no such courts exist at present in any area outside India and since not only the State of Jammu & Kashmir but also the State of Nagaland and the tribal areas within the State of Assam are textually excluded from the operation of the Code, those words have been replaced by the words “a court in any State or area in India outside the said territories”.

CHAPTER VIII

SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

Security for keeping the peace on conviction.

106. (1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the

time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.

(2) The offences referred to in sub-section (1) are—

- (a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence punishable under section 153A or section 153B or section 154 thereof ;
- (b) any offence which consists of, or includes, assault or using criminal force or committing mischief ;
- (c) any offence of criminal intimidation ;
- (d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.

NOTES

Modifications in the old provision.—This section corresponds to old section 106. Certain changes made in the law under the old Code are noted below.

As to the categories of Court which could take action, the old section enumerated “a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class”. The new provision mentions only a Court of Session and a Court of a Magistrate of the first class, since under the new Code, D.M. and S.D.M. do not try cases and a Magistrate of the first class includes a Metropolitan Magistrate (old Presidency Magistrate).

The scope of the old section has been modified in the following respects :

- a. The exceptions in regard to offence punishable under section 149 of the IPC (being a member of an unlawful assembly) has been omitted to settle the case law on the point of applicability of section 106 to cases of conviction under section 149 of the Indian Penal Code—Cf. *Ramjan v. Jawalauddin* AIR 1944 All. 272 with *In re. Mekrai* AIR 1939 Mad. 787. In view of this omission the Courts may in their discretion demand security from a person convicted under section 149 whatever be the nature of the offence committed by the other member or members of the unlawful assembly. “This slight extension of the scope of the section”, the Law Commission observed “will notbe harmful in any way”.
- b. An exception in respect of offence under section 143 of the Indian Penal Code has been removed on the same analogy.
- c. New offence under section 153B of the Indian Penal Code (imputations prejudicial to national integration) created by the Criminal Law (Amendment) Act, 1972 (Act 31 of 1972), has been added as an exception so that no security could be demanded of a person convicted of that offence.
- d. As section 106 then stood, security could not be required on conviction for abetment of criminal intimidation. This has been set right.

- e. The phrase "offence involving breach of the peace" occurring in the old section 106 had given rise to conflicting judicial decisions [See *King v. Maung Kyi Nyo* AIR 1940, Rang. 50] which, by and large, had interpreted the phrase to mean that breach of the peace must be an essential ingredient of the offence in order to attract section 106. This phrase has, therefore, been replaced by omnibus words "offence which caused, or was intended or known to be likely to cause, a breach of the peace" so that the provision would apply even if breach of the peace is not an ingredient of the offence.
- f. Offences which consist of, or include, using criminal force or committing mischief have been brought within the purview of the section. The Law Commission observed : "The latter appears to be specially desirable in order to check violent demonstrations involving deliberate destruction of property which are unfortunately becoming common."

Security for keeping the peace in other cases.

107. (1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond [with or without sureties,] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

NOTES

Functions under the section assigned to E.M.—This section corresponds to old section 107 with improvement in drafting. The functions under the section have been assigned to Executive Magistrates instead of D.M. or S.D.M. (unlike under the old section). The Law Commission observed :

"In order to be effective, proceedings under the section have to be taken urgently, and as they are immediately concerned with the maintenance of peace and order, the functions should.....be assigned to executive magistrates.....District Magistrate who is the administrative head of the district will not in practice have any time to look to such proceedings."

In view of the above change, sub-sections (3) and (4) of the old section have been omitted, as unnecessary.

Magistrate's power to demand surety.—Under the new Code a Magistrate could not demand surety from a person for keeping the peace. He could only demand a personal bond from the person concerned. Sub-section (1) of section

107 has, therefore, been amended by the Amendment Act, 1978, to restore the old provision permitting the demand of the sureties along with the bond. Thus the Magistrate has been enabled to demand sureties in appropriate cases.

Security for good behaviour from persons disseminating seditious matters.

108. (1) When [*an Executive Magistrate*] receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,—

(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,—

(a) any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 295A of the Indian Penal Code (45 of 1860), or

(b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code (45 of 1860),

(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code (45 of 1860),

and the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

(2) No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867), with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf.

NOTES

Power vested in J.M.—This section corresponds to old section of the same number. Under the old section, the power was vested in D.M., Presidency Magistrate and the Magistrate of the first class. In recommending that the power should be exclusively vested in Judicial Magistrates, the Law Commission observed :

“...the final order to be passed in these proceedings affects the liberty of the person against whom the proceedings are instituted and that sifting of evidence in a judicial manner is required before an order demanding security can justifiably be passed. . . Inquiry. . . partakes of the character of a trial, though technically the person against whom the proceedings are taken is not an accused person, there is no offence to be inquired into or tried and the ordinary rules of evidence are relaxed to some extent.”

Amendment Act, 1980.—However, the position has been *reversed* by the Amendment Act, 1980 with effect from 23-9-1980. The power to initiate security proceedings under this section as well as under sections 109 and 110 has now been vested in the *Executive Magistrates*. While piloting the Amending Bill in Lok Sabha, the Minister of State of Home Affairs observed : “ . . . in the repealed Code of 1898, there was no obligation to entrust these proceedings to Judicial Magistrates. These proceedings are not strictly trials and are not punitive in nature. They are security proceedings designed to play a role in the prevention of crime and thereby assist in the maintenance of law and order. In principle, therefore, there could be no objection to the entrustment of these proceedings to the executive magistracy which is responsible for the maintenance of law and order. However, power has been retained for any State, which so prefers, to entrust these proceedings to Judicial Magistrates, after following the procedures prescribed in section 478. By section 9 of the Amendment Act, 1980, it has been provided that “all proceedings under this section and sections 109 and 110 (in which similar amendment has been made) pending before any Judicial Magistrate of the first class immediately before 23-9-1980 shall be dealt with as if this amendment had not been made.

Addition of offences in sub-section (1).—In sub-clause (a) of clause (i) of sub-section (1) mention has been made of publication under section 295A (outraging religious feelings, etc.) and section 153B (imputation prejudicial to national integration) of the Indian Penal Code as they also lead to disturbances. On the same analogy publication, etc., of obscene matter as mentioned in section 292 of IPC has been added in clause (ii) of sub-section (1).

Security for good behaviour from suspected persons.

109. When [an *Executive Magistrate*] receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

NOTES

Joint Committee's observations on the provision.—It will be instructive to quote in full the observations of the Joint Committee of Parliament which considered the provision :

“The clause which reproduces section 109 of the old Code has long been the subject of some controversy. There is a sizeable section of opinion which holds the view that the provision is being widely abused and innocent persons are being sent to jail as a result of the proceedings under this section, either for the purpose of showing better statistics of prevention of crime or for other more objectionable purposes. On the other hand there is also a sizeable section of opinion which would consider the retention of this provision as indispensable for the maintenance of law and order. It is urged that but for this provision the incidence of crime would be very high and professional thieves and anti-social elements would have a field day. The object of this provision is to check and control the persons who are likely to commit offences and it can not be denied that this cannot be done unless they are prevented from doing so by resorting to provisions of this kind. The Committee was informed that

practically all the State Governments are opposed to the deletion of this provision mainly on this ground.

The Committee has given a very careful consideration to the conflicting view points indicated above, and has come to the conclusion that the provision relating to persons who have no ostensible means of subsistence or who cannot give a satisfactory account of themselves, should be deleted.

Paragraph (a) which deals with persons taking precaution to conceal their presence with a view to committing offences, however, stands on a different footing because, firstly, it is not so widely abused and secondly, it comes in only when there is suspicion of the commission of an offence. The Committee considers that this part of the clause should be retained. But even here it should be restricted to cases where the suspected offence is a cognizable offence. The Committee also considers that the bond to be executed could be without surety if the Magistrate thinks it fit.

In coming to the above conclusion the Committee has taken due note of the fact that the power under the clause has been conferred on the Judicial Magistrates, who may be expected to act impartially, with due regard not only to the rights of the persons proceeded against but also to the reasonable needs of the prevention of crime."

Amendment Act, 1980.—However, with effect from 23-9-1980, the power under this section, as explained in Notes under section 108, vests in the Executive Magistrates.

Concealment provision redrafted.—It may also be pointed out that the words "that there is within his local jurisdiction a person taking precautions to conceal his presence" have been substituted for the words "that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction" in the old section. The redraft is intended to resolve a conflict of judicial decisions [*Gagan Chandra v. Emp.* AIR 1929 Cal. 775 ; *Emp. v. Phuchai* AIR 1929 All. 33] on the interpretation of these words. The controversy had centred on whether, (a) what is sought to be concealed is "presence within the local limits"; or (b) what is sought to be concealed is "presence" (*simpliciter*).

Security for good behaviour from habitual offenders.

110. When [*an Executive Magistrate*] receives information that there is within his local jurisdiction a person who—

- (a) is by habit a robber, house-breaker, thief, or forger, or
- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or
- (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or
- (d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or
- (e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely :—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940) ;

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973) ;

(c) the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952) ;

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954) ;

(e) the Essential Commodities Act, 1955 (10 of 1955) ;

(f) the Untouchability (Offences) Act, 1955 (22 of 1955) ;

(g) the Customs Act, 1962 (52 of 1962) ; or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

NOTES

Addition of offences in clause (f).—This section corresponds to section 110 of the old Code. Besides conferring power under the section on all Judicial Magistrates of the first class, some more offences have been included in clause (f) of the section. Recommending the addition of those offences, the Joint Committee of Parliament observed : "The Committee is of the view that persons who habitually commit offences of anti-social nature such as those relating to adulteration of food or drugs or foreign exchange or customs or hoarding and profiteering or corruption, deserve perhaps even greater control than persons who habitually commit offences like theft, etc."

Amendment Act, 1980.—As explained in Notes under section 108, the power under this section now vests in the Executive Magistrates with effect from 23-9-1980.

Order to be made.

111. When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Procedure in respect of person present in Court.

112. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

113. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody,

a warrant directing the officer in whose custody he is to bring him before the Court :

Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order to accompany summons or warrant.

114. Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance.

115. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour and may permit him to appear by a pleader.

NOTES

Sections 111 to 115 correspond to sections 112 to 116 of the old Code respectively. No change has been made in those provisions, except that old section 115 has been amended to extend the provision to bonds for good behaviour also.

Inquiry as to truth of information.

116. (1) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons cases.

(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :

Provided that—

- (a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour ;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs :

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

NOTES

This section corresponds to section 117 of the old Code. Sub-sections (6) and (7) are new. The implications of the section are discussed below :

Time of commencement of inquiry when person not present.—Sub-section (1) has fixed the date of commencement of the proceedings, i.e., the date on which the magistrate starts the inquiry after appearance of all the persons concerned, as the starting point for computing the period of six months under the first part of that sub-section. Fixing of this date will not adversely affect persons in detention pending inquiry for proceedings against them would terminate at the end of six months of detention irrespective of the date of commencement of inquiry. The petitioners filed their reply to show cause notice on 5-9-1974. On 17-10-1974, the magistrate fixed 2-11-1974 for evidence. On 1-3-1975, the petitioners filed an application that because the proceedings had been pending for more than six months, they stood automatically terminated. Relying on *Madhu Limaye v. Ved Murti* AIR 1971 SC 2481, the court rejected the contention that an enquiry under section 116(1) does not commence unless some evidence is laid in the proceeding.

The court also held that the enquiry may commence only after such a person files his show cause and when the magistrate applies his mind to that show cause notice. The language of section 116(1) shows that an enquiry will commence when the magistrate proceeds to enquire into the truth of the information upon which action has been taken, as held in *Jalaluddin Kunju v. State* AIR 1952 TC 262. In other words, an enquiry envisaged by section 116 commences only when the magistrate applies his mind to the facts of the case in the

presence of the persons concerned. Held in the present case that the inquiry commenced not on 5-9-1974 when the petitioners filed their reply to the show cause notice, but on 17-10-1974, when the magistrate fixed the date for production of evidence—*Nathan Yadav & Others v. State of Bihar* 1976 ILR 1976 Pat. 338.

Time of commencement of inquiry when person present.—Having regard to the provisions of sections 112 and 116(1) and the fact that a summons procedure has been prescribed for an inquiry by sub-section (2) of section 116, it would appear that in the case of a person who is present in the court when the order under section 111 is passed, the said order must be read over to him and the substance thereof explained to him if he so desires on that very day, and therefore the enquiry in his case shall be deemed to have commenced on that very day irrespective of the fact whether the magistrate records his plea or not. In the case of an opponent who is not present in the court when the order made under section 111 is passed, but whose presence is secured by a summons or a warrant, as provided under section 113, it would appear that since there is nothing to prevent the magistrate from reading the accusations to him and recording his plea on the very day when he so appears or is brought before the magistrate, and since the legislative mandate is to proceed to inquire into the truth of the accusation on the happening of such an event, the inquiry in the proceedings must be deemed to have commenced against such person on the very day when his presence is secured on the day fixed by the court. This is so irrespective of the fact whether the magistrate records the plea of the opponent or not, and irrespective of the fact whether the magistrate proceeds with the inquiry or not—*Dwarkanath Ramchandra v. State of Maharashtra* 1977 Cr. LJ 120.

Whether bond amount can be reduced.—A revision application for reducing the amount of the bond and sureties under section 123(2) was dismissed holding that the Sessions Judge has no jurisdiction to reduce the amount of bond and the number of sureties. Failure of a person to furnish sureties demanded under section 116(3) results only in detention of the person. But detention does not mean or denote imprisonment or punishment. It is true that the Court of Session exercising appellate jurisdiction under section 386, may while upholding the order asking for the security reduce the amount of security or the number of sureties or the time for which the surety is being asked for, yet this overlapping is no reason to conclude that section 123(2) also relates to an order passed under section 116(3). Moreover, the power to reduce the security etc. has been conferred on the CJM, the Court of Session and the High Court, whereas appellate powers are conferred only on the Court of Session—*Gur Dayal Singh & Others v. the State* ILR [1976] II Delhi 330.

Modification of old provision.—Old sub-section (3) had started with 'Pending the completion of the enquiry'. However, new sub-section (3) starts with "After the commencement and before the completion of the inquiry". This change has been made so as to put matter beyond doubt that the interim bond could be taken only after the commencement of proceedings before they are completed. Incidentally, the new amendment also conforms to the decision of the Supreme Court in *Madhu Limaye v. Ved Murti* AIR 1971 SC 2481.

Time for completion of inquiry.—The first part of sub-section (6) provides that if the inquiry under the section is not completed within a period of six months from the date of the commencement thereof, such inquiry should stand terminated on the expiry of that period. A special power has been retained with the Magistrate to extend this period where there are special reasons to do so. This

provision would apply to all proceedings whether or not the person concerned is in detention. Where the person is in detention, a further provision has been made to the effect that the proceedings shall stand terminated on the expiry of a period of six months of detention. This is an absolute limit and the Magistrate has no power to extend the period of detention or the inquiry in such cases.

Circumstance in which the inquiry may continue beyond six months.—As has been held in *Nathan Yadav & Others v. State of Bihar* ILR 1976 Pat. 338, the magistrate must apply his mind to the question whether the inquiry would continue or not beyond six months from the commencement of the inquiry. If that is not done and the inquiry is allowed to continue, then the whole purpose of section 116(6) would be frustrated. In cases where the magistrate has applied his mind to the question, but for some reason or the other, has not passed the order within six months but passes it thereafter, the inquiry should continue and ought not to stand automatically terminated. For, it is a well established law that no party to a litigation should be made to suffer on account of some fault on the part of the court. The maxim is *actus curiae neminem gravabit*, the act of the court shall prejudice no man.

Order to give security.

117. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly :

Provided that—

- (a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111 ;
- (b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive ;
- (c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

Discharge of person informed against.

118. If, on an inquiry under section 116, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the enquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Commencement of period for which security is required.

119. (1) If any person, in respect of whom an order requiring security is made under section 106 or section 117, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

Contents of bond.

120. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to reject sureties.

121. (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond :

Provided that before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding the inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall, in making the inquiry, record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any), that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing :

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

NOTES

Sections 117 to 121 correspond to sections 118 to 122, respectively, of the old Code, without any change.

Imprisonment in default of security.

122. (1)(a) If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(b) If any person after having executed a bond without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be

without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit :

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) If security has been required in the course of the same proceeding from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned, shall not exceed the period for which he was ordered to give security.

(5) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (4) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(6) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(7) Imprisonment for failure to give security for keeping the peace shall be simple.

(8) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple, and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.

NOTES

This section corresponds to section 123 of the old Code. Three changes have been made in the old provisions :

- a. Sub-section (1)(b) has been added to provide for consequences of breach of conditions of bond ;
- b. Reference to Presidency Magistrate and High Court has been omitted ;
- c. Provision has been made in sub-section (3) to give the person concerned an opportunity of being heard before passing an order.

Power to release persons imprisoned for failing to give security.

123. (1) Whenever [*the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case*] is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the High Court or Court of Session, or, where the order was made by any other Court, the [*District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case*] may make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts :

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The State Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any person has been discharged is, in the opinion of the [*District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case*] by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the [*District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case*].

(7) Unless such person gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the [*District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case*] may remand such person to prison to undergo such unexpired portion.

(8) A person remanded to prison under sub-section (7) shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

(9) The High Court or Court of Session may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by any order made by it, and the [*District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case*] may make

such cancellation where such bond was executed under his order or under the order of any other Court in his district.

(10) Any surety for the peaceable conduct or good behaviour of another person ordered to execute a bond under this Chapter may at any time apply to the Court making such order to cancel the bond and on such application being made, the Court shall issue a summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or to be brought before it.

NOTES

Changes in old section.-- Sub-sections (1) to (8) correspond to section 124 and sub-section (9) to section 125 of the old Code. The references to Presidency Magistrate and District Magistrate wherever they had occurred in old sections 124 and 125 have been replaced by the reference to Chief Judicial Magistrate. In addition, the power to cancel the bond or reduce the amount of security has been conferred on the High Court and the Court of Session.

Sub-section (10) incorporates the provision contained in *old* section 126 in the revised form ; so as to vest the power to discharge sureties in the Court which ordered the bond to be taken.

District Magistrate's power to release persons imprisoned for failure to give security.—Under the new Code even a bond executed under the orders of an Executive Magistrate could be cancelled only by the Chief Judicial Magistrate. Section 123 has, therefore, been amended by the Amendment Act, 1978, to empower the District Magistrate to release persons imprisoned for failure to give security in a case where such person was ordered under section 117 by an Executive Magistrate to furnish security.

Security for unexpired period of bond.

124. (1) When a person for whose appearance a summons or warrant has been issued under the proviso to sub-section (3) of section 121 or under sub-section (10) of section 123, appears or is brought before the Magistrate or Court, the Magistrate or Court shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security.

(2) Every such order shall, for the purposes of sections 120 to 123 (both inclusive), be deemed to be an order made under section 106 or section 117, as the case may be.

NOTES

This section repeats the substance of section 126A of the old Code with the addition of the words "or Court" after the word "Magistrate" in both places in sub-section (1) thus bringing the sub-section in line with sub-section (10) of the preceding section.

CHAPTER IX
ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND
PARENTS

Order for maintenance of wives, children and parents.

125. (1) If any person having sufficient means neglects or refuses to maintain—

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation : For the purposes of this chapter,—

- (a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority ;
- (b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due :

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order

under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation : If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that with sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

NOTES

The provisions contained in this Chapter correspond to the provisions in Chapter XXXVI [sections 488 to 490] of the old Code. The Chapter contains a number of changes. They are discussed below :

Placement of section.—The provisions of the old Code have been shifted to new Code's earlier part. This is perhaps on account of the fact that "these provisions are aimed at preventing starvation and vagrancy leading to the commission of crime".

Functions assigned to JM.—As the functions of Magistrates under the Chapter are of a judicial character, the reference to the District Magistrate and Sub-Divisional Magistrate in the old section has been replaced by that of the Magistrate of the first class, which means Judicial Magistrate of the first class [see section 3 of the Code].

Only minor children covered.—The new provision makes it clear that only minor children unable to maintain themselves are covered by the same. This sets at rest controversy in the past whether 'child' meant only 'minor' child or covered major one also. See, *Saraswati v. Madhavan* AIR 1961 Ker. 297 which reviews the case-law on the subject. The Joint Committee of Parliament has observed :

"In the case of a child who has attained majority, the liability of the parents to pay maintenance should arise only when the child is by reason of any physical or mental abnormality or injury unable to maintain itself." [See clause (c) of sub-section (1).]

Maintenance to wife.—As regards wife, the Joint Committee of Parliament has observed :

- i. "In the case of wife, the order can be passed only if she is unable to maintain herself. Having regard to the object behind these provisions, which is mainly to prevent vagrancy, there is, in the Committee's opinion, no need to compel the husband to pay maintenance to a wife who is possessed of sufficient means." [See sub-section 1(a).]
- ii. "The benefit of the provision should be extended to a woman who has been divorced from her husband, so long as she has not remarried after the divorce. The Committee's attention was drawn to some instances in which, after a wife filed a petition under this section on the ground of

neglect or refusal on the part of her husband to maintain her, the unscrupulous husband frustrated her object by divorcing her forthwith thereby compelling the Magistrate to dismiss the petition. Such divorce can be made easily under the personal laws applicable to some of the communities in India. This causes special hardship to the poorer sections of the community who become helpless. The amendments made by the Committee, are aimed at securing social justice to women in our society belonging to the proper classes.” [See *Explanation (b)* to sub-section (1) of section 125 and section 127(3).]

Maintenance to daughters.—As regards married daughters, the Joint Committee of Parliament has observed :

“The Committee is of opinion that a married daughter should not be entitled to an order under this section if she has attained majority. In such cases the responsibility of maintaining her should be that of the husband and not of the father. In the case of a minor married daughter who usually resides with her parents, the father may be made liable to pay maintenance until she attains majority.” [See proviso to sub-section (1) of section 125.]

Maintenance to indigent parents.—The old section 488 did not cover indigent parents. The Law Commission emphasised that the object of section 488 (old), viz., to prevent vagrancy was relevant in the case of indigent parents also. It observed : “The principle of section 488 is essentially one of socialism, and ought to be given a wide scope.” The Joint Committee of Parliament in extending the scope of the section to indigent parents observed :

“The Committee considers that the right of the parents not possessed of sufficient means to be maintained by their son should be recognised by making a provision that where the father or mother is unable to maintain himself or herself, the order for payment of maintenance may be directed to a son who is possessed of sufficient means. If there are two or more children, the parents may seek the remedy against any one or more of them.”

The precise scope of the extended provision has been discussed by the Law Commission as follows :

“We may note that under the Hindu Adoptions and Maintenance Act [section 20 of the *Hindu Adoptions and Maintenance Act, 1956*], a Hindu is bound to maintain his or her aged or infirm parents so far as the parent is unable to maintain himself or herself out of his or her own earnings or other property. Under the Muslim law [*Tyabji, Muslim Law (1958), page 279, para 330*] also, there is an obligation to maintain one’s ‘necessitous parents’, if one has the means, and this obligation rests in equal shares upon children of both sexes. Hence the proposed amendment will not cast any new obligation. We may add that the proposed amendment does not imply that the parents will have a right to separate maintenance. Whether there is sufficient reason for a claim for separate maintenance by the wife is even now determined by the Court, and the same will be the position as regards the right of the parents.”

As stated above, section 125 has made a number of changes in the old law relating to payment of maintenance under the Code. The new provisions may further be elucidated by reference to case law on the subject.

Meaning and scope of definition of ‘wife’.—A divorced woman is wife within the meaning of Chapter IX of the Code and as such the Code allows maintenance to a divorcee even if she had been divorced before the Code came into force.

If conditions under section 127(3) are established, she may not be entitled to maintenance; but that does not mean that she ceases to be 'wife' for the purpose of section 125—*Mohd. Haneef v. Anisa Khatoon* 1976 Cr. LJ 520 (All.); *K. Raza Khan v. Mumtaz Khatoon* 1976 Cr. LJ 905.

Looking at the scheme of the provisions as a whole, it appears that the definition of 'wife' intends to and takes in its sweep, past actions also and therefore, wives who have been divorced before the Act can also take advantage of this definition. It cannot be said that the verb 'has been' in the definition relates only to future action and not the past one—*Kunhi Moyin v. Pathuwma* ILR [1976] I Ker. 188.

The definition of 'wife' does not exclude Muslim wives notwithstanding that under the Muslim Law a divorced wife is entitled to maintenance only up to the period of *iddat*. The provisions of section 125 would entitle even a Muslim divorced wife to claim maintenance from her husband till she remarries. After the coming into force of section 125, a Muslim husband has an obligation to maintain his former wife till she remarries. The husband cannot divorce his first wife and marry a second with impunity. He has to fulfil his obligation imposed by the section. He cannot also invoke section 127(3) when he has not paid anything—*Mehbubabi Nasir Shaikh v. Nasir Farid Shaikh* 1976 Mah. LJ 631.

Whether definition of 'wife' violates article 25 of the Constitution.—The new definition of the word 'wife' contained in clause (b) of the *Explanation* to subsection (1) of section 125 does not violate the fundamental right guaranteed under article 25(1) of the Constitution inasmuch as the definition is covered by a legislation 'providing for social welfare and reform' envisaged in that article—*Kunhi Moyin, ibid*.

Relevance of personal law.—Under section 488 of the old Code, it was well-settled that the speedy remedy provided therein was available to all persons belonging to all religions and personal law of the parties had no relevance in the matter. The same position obtains in regard to the provisions in the new Code also—*Umar Hayath Khan v. Mahaboobunnisa* [1975] MLJ 570.

The principle of Muslim Law that a divorced wife is entitled to maintenance only during the period of *iddat* is not relevant when considering the provisions of section 125 enacted by Parliament for all unprovided wives, irrespective of their religion or caste. There is nothing in the Maintenance provisions of the Code to show that Muslim women are excluded from their benefits. The fact that the divorce was a Khula divorce is of no consequence because *Explanation (b)* to section 125(1) makes no distinction between Khula divorce and talaq divorce—*Khurshid Khan v. Husnabanu* 1976 Cr. LJ 1584 Bom. Section 125 confers additional benefits and they will prevail over the benefits under personal law. They do not at all conflict with the right a woman has under the Mohammedan law. A statute can confer rights and benefits on persons even though they happen to be more than what the persons are entitled to under their personal law—*Umar Hayath Khan, ibid*.

'Unable to maintain'—meaning and scope of.—A comparative study of the old and new provisions would show that in section 488 of the old Code the words used were 'unable to maintain itself' i.e. they were apparently applicable only to the child and not to the wife. Under section 125 of the new Code, this condition has been expressly made applicable to the case of wife—*Bhagwan Datt v. Kamladevi* [1975] 2 SCC 386.

The inability of a wife to maintain herself is a condition precedent to the very maintainability of her petition for maintenance—*Sampoornam v. Arjunam* 1975 Cr. LJ 1466 (Mad.). Under section 125(1)(a), maintenance allowance cannot be granted to every wife who is neglected by her husband or whose husband refuses to maintain her but can only be granted to a wife who is unable to maintain herself. This is a departure from section 488 of the old Code under which every wife neglected or not maintained by her husband was entitled to maintenance—*Man Mohan Singh v. Mahindra Kaur* 1976 Cr. LJ 1664(All.).

The concept of able-bodied person cannot be imported while interpreting the expression 'unable to maintain'. The expression connotes a situation wherein maintenance is not possible to obtain from any other source. It cannot be said that merely because a person is able-bodied and does not suffer from any physical or mental disability, he is always able to earn. Ability to earn requires something more than a fit state of mind or body. It requires opportunity to earn, education or experience and many a time finance, push and pull. If these are not available to an able-bodied person, then howsoever capable physically and mentally he may be, he should be considered as a person who is not able to earn or maintain himself. Therefore, the prayer of maintenance of a wife cannot be rejected on the ground that she is able-bodied or that she does not suffer from any physical or mental capacity—*Nirmalabahanji v. Jayantilal Vithaldas* 1976 Mah. Cr. R. 7.

'Mother'—meaning of.—Having regard to the object and intention of the Legislature and in the absence of any definition, the word 'mother' in section 125 will have to be given its natural meaning and so construed, it will mean only the natural mother and not include the step-mother, who in common parlance is a distinct and separate entity and cannot be equated with one's own mother. The words used in clause (d) of section 125(1) being 'his mother', the mother who can claim maintenance must be the natural mother of the person from whom maintenance is claimed. In the circumstances a step-mother is not entitled under section 125 to claim maintenance from a step-son—*Ramabai v. Dinesh* 1976 Mah. LJ 565.

Fixation of amount of maintenance.—A court awarding only meagre amount of Rs. 20 per child acts arbitrarily and with indifference to prevailing conditions. In such cases the High Court would interfere under article 227 of the Constitution—*Mehbubabi Nasir Shaikh, ibid.*

A divorced wife is entitled to maintenance till such period as she chooses not to remarry. The period is likely to be long and hence the amount of maintenance to be fixed should not be such as would tempt her to remain unmarried for a long time—*Umar Hayath Khan, ibid.*

Where the husband was getting Rs. 247 p.m. by way of salary as a school teacher and was possessed of 3-4-bighas of land and some shares in a bank, the maintenance fixed at Rs. 70 p.m. having regard to status of parties was considered sufficient to meet the ends of justice—*Tirtha Kumar Hazra v. Dipa Rani Hazra* 1977 Cr. LJ Note No. 9.

Proceeding under section 125.—

- a. *First requirement* : In a proceeding under section 125, the first condition which requires to be satisfied is that the applicant is lawfully married wife of the opposite party. There can be no question of maintenance unless the relationship of husband and wife exists between the parties—*Tirtha Kumar Hazra, ibid.*

- b. Nature of proceeding :* The application under section 125 for maintenance cannot be treated as 'complaint' as defined in section 2(d) since when an application for maintenance is made, there is no allegation of commission of any offence. Hence the procedure of inquiry contemplated by section 202 before issuance of the process cannot apply to the application for maintenance made under section 125—*Jugtambalal J. Gandhi v. State of Gujarat* 1975-76 Mah. Cr. Reporter, 437.

Procedure.

126. (1) Proceedings under section 125 may be taken against any person in any district—

- (a) where he is, or
- (b) where he or his wife resides, or
- (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases :

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

NOTES

Enlargement of venue of proceedings.—This section is based on section 488(6) to (8) of the old Code. Sub-section (1) provides for venue of proceedings for maintenance. The venue has been enlarged so as to include the place where the husband and wife may be residing on the date of application. This is on account of the fact, as observed by the Law Commission, that "often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. They would be put to great harassment and expenditure, unless the venue of the proceeding is enlarged".

Award of cost.—The proviso to sub-section (2) has been modified to enable the Magistrate to award cost where an *ex parte* order is set aside.

Alteration is allowance.

127. (1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit:

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage ;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman ;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order.

NOTES

Monthly allowance to be taken into account.—The provision of this section corresponds to section 489 of the old Code. Sub-sections (3) and (4) are new consequential on the amendments made in section 125 *supra*. It has also been clarified that the monthly allowance, if any, ordered by any court under that provision should be taken into account by a Civil Court when it proceeds to pass a decree for maintenance or dower in respect of the same person.

Scope of section 127(3)(b).—Section 127(3)(b) refers not to maintenance during the period of *iddat* or payment of dower. It is not a sum of money which under the personal law is payable on divorce as expressed in section 127(3)(b). On the contrary, what is impliedly covered by this clause is such sum of money as alimony or compensation made payable on dissolution of the marriage under customary or personal law codified or uncoded, or such amount agreed upon at the time of marriage to be paid at the time of divorce ; the wife agreeing not to claim maintenance or any other amount—*Kunhi Moyin v. Pathumma* [1976] 1 ILR Ker. 182.

Right to a divorced Muslim wife.—In *Rukhsana Parvin v. Shaikh Mahomed* 1977 Mah. LJ 231, it has been held that a divorced Muslim wife does not have

subsisting right of maintenance inasmuch as she is entitled to the amount of Mehr also. The magistrate will have no jurisdiction to pay maintenance to a divorced Muslim wife, if she has already received the amount of Mehr and maintenance during the period of *iddat*. It may, however, be pointed out that whereas *mehr* is a consideration of marriage, maintenance is for dissolution of marriage and as such it is doubtful if *mehr* comes within the ambit of section 127(3)(b).

Cancellation of order under section 127(3)(b).—If a Muslim divorced wife had shown her unwillingness to receive customary amount tendered by her husband then an order of monthly allowance passed in her favour cannot be cancelled under section 127(3)(b). This is because, clause (a) of section 127(3) contemplates act of the wife in getting remarried while clause (c) refers to surrendering of her right to maintenance after divorce. Both these eventualities are brought about by voluntary and revokable act on the part of the wife. If this standard is adopted it is clear that the words 'had voluntarily surrendered her rights to maintenance after her divorce' occurring in clause (c) of sub-section (3) of section 127 contemplate a voluntary act of actual receipt of the whole of the sum referred to in clause (b). Mere tender of an amount by husband, which the wife is not prepared to accept, would not thus fall under clause (b). Giving this meaning to the words 'has received' in clause (b), it would be evident that one of the eventualities in which a magistrate can cancel maintenance order, can come into existence only by a voluntary act of the wife, namely, actually accepting the amount offered as contemplated by clause (b)—*Hajuben v. Ibrahim* 1976-77 Mah. Cr. R. 293.

Enforcement of order of maintenance.

128. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

NOTES

This section repeats in substance the provision contained in section 490 of the old Code.

CHAPTER X

MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY

A. Unlawful assemblies

Dispersal of assembly by use of civil force.

129. (1) Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub-section (1), may proceed to disperse such assembly by force and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of armed forces to disperse assembly.

130. (1) If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces.

(2) Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(3) Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Power of certain armed force officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly and no Executive Magistrate can be communicated with, any commissioned or gazetted officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law ; but if, while he is acting under this section, it becomes practicable for him to communicate with an Executive Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate, as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under preceding sections.

132. (1) No prosecution against any person for any act purporting to be done under section 129, section 130 or section 131 shall be instituted in any Criminal Court except—

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces ;

(b) with the sanction of the State Government in any other case.

(2)(a) No Executive Magistrate or police officer acting under any of the said sections in good faith ;

(b) no person doing any act in good faith in compliance with a requisition under section 129 or section 130 ;

(c) no officer of the armed forces acting under section 131 in good faith ;

(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey ;

shall be deemed to have thereby committed an offence.

(3) In this section and in the preceding sections of this Chapter,—

(a) the expression “armed forces” means the military, naval and air forces, operating as land forces and includes any other armed forces of the Union so operating ;

(b) “officer”, in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer, a non-commissioned officer and a non-gazetted officer ;

(c) “member”, in relation to the armed forces, means a person in the armed forces other than an officer.

Changes made in the old provision.—Chapter X has been divided into four parts, namely, Parts A, B, C and D to combine the provisions of Chapters IX, X, XI and XII of the old Code, respectively.

Sections 129 to 132 correspond to sections 127 to 132A of the old Code, with certain changes indicated below.

a. The powers in respect of Part A have been conferred only on Executive Magistrates.

b. The Joint Committee of Parliament while adding the words “in the absence of such officer-in-charge, any police officer, not below the rank of a sub-inspector”, in section 129(1), has observed—

“Sometimes it happens that an officer-in-charge of a police station is not readily available at the place where there is an unlawful assembly, to order the dispersal of such assembly although there are other officers of the police equal in rank to such officer-in-charge. The delay in getting in touch with such officer, might result in the situation becoming unmanageable. The amendment made by the Committee seeks to remove this difficulty.”

c. The expression “gazetted officer” has been used in section 131, to cover officers of the C.R.P. and B.S.F. which are also included in the expression “armed forces”.

d. The definition of the word “officer” in the old section 132 had led to confusion between superior officers and inferior officers. This has been removed by dividing the armed forces into “officers” and “members”. The latter word has been defined in sub-section (3)(c).

B. Public nuisances

Conditional order for removal of nuisance.

133. (1) Whenever a District Magistrate or a sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf

by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

- (a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public ; or
- (b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated ; or
- (c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped ; or
- (d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary ; or
- (e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public ; or
- (f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

- (i) to remove such obstruction or nuisance ; or
- (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed ; or
- (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance ; or
- (iv) to remove, repair or support such building, tent or structure, or to remove or support such trees ; or
- (v) to fence such tank, well or excavation ; or
- (vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order ;

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation : A “public place” includes also property belonging to the State camping grounds and grounds left unoccupied for sanitary or recreative purposes.

NOTES

Assignment of functions to EM.—This section corresponds to old section 133. The Law Commission observed that the functions under the section should be with the Executive Magistrates and it need not be confined to DM and SDM. The Commission also stated that Judicial Magistrates need not be brought in to adjudicate on these matters and to pass orders on the removal of nuisances. The Commission, however, recommended that “instead of empowering any Executive Magistrate to take action under the section, the State Government should specially empower an Executive Magistrate if and when considered necessary”. Hence, the functions under the section have been allocated to Executive Magistrates.

Other changes.—In view of the definition of the expression “police report” [vide section 2(r)] that expression which had occurred in old section 133(1) has been replaced by “report of a police officer” in section 133(1).

Besides this, in the concluding paragraph of sub-section (1) the words “show cause why the order should not be made absolute” have been substituted for the words “move to have the order set aside or modified” used in the old provision. This is intended to bring the language in harmony with the language of sections 136 and 138.

Service or notification of order.

134. (1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may, by rules, direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

NOTES

This section is the same as section 134 of the old Code.

Persons to whom order is addressed to obey or show cause.

135. The person against whom such order is made shall—

- (a) perform, within the time and in the manner specified in the order, the act directed thereby ; or
- (b) appear in accordance with such order and show cause against the same.

NOTES

Abolition of jury.—This section corresponds to section 135 of the old Code minus the provision relating to appointment of jury. In recommending the deletion of provision for jury, the Law Commission observed :

“Sections 135 to 139 (*old Code*) contemplate the appointment of jury consisting of not less than five members who will practically decide whether the conditional order made by the Magistrate under section 133 is reasonable and proper or whether it should be modified in any way or whether it should be made absolute.....We notice.....that, ‘experience over the years had shown that very rarely did a party ask for the appointment of a jury ; further whenever a party did ask for the appointment of a jury, the request was not made in order to have a proper decision of the case but was made mainly for the purpose of delaying the proceedings’.....A jury of the type provided for..... is, in our opinion, most unlikely to be helpful in reaching a proper decision. It will be difficult to find a person in the locality imbued with a strong civic sense, and capable of resisting extraneous pressure, to serve as jurors in such proceedings.”

Consequences of his failing to do so.

136. If such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code (45 of 1860), and the order shall be made absolute.

Procedure where existence of public right is denied.

137. (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court ; and, if he finds that there is no such evidence, he shall proceed as laid down in section 138.

(3) A person who has, on being questioned by the Magistrate under subsection (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial.

NOTES

Sections 136 and 137 correspond to sections 136 and 139A of the old Code, respectively.

Procedure where he appears to show cause.

138. (1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

NOTES

Magistrate's power to make conditional order.—This section corresponds to section 137 of the old Code. In sub-section (2) it has been made clear that the Magistrate has the power to modify the conditional order on the basis of the inquiry made by him and then make it absolute.

Power of Magistrate to direct local investigation and examination of an expert.

139. The Magistrate may, for the purposes of an inquiry under section 137 or section 138—

- (a) direct a local investigation to be made by such person as he thinks fit ; or
- (b) summon and examine an expert.

Power of Magistrate to furnish written instructions, etc.

140. (1) Where the Magistrate directs a local investigation by any person under section 139, the Magistrate may—

- (a) furnish such person with such written instructions as may seem necessary for his guidance ;
- (b) declare by whom the whole or any part of the necessary expenses of the local investigation shall be paid.

(2) The report of such person may be read as evidence in the case.

(3) Where the Magistrate summons and examines an expert under section 139, the Magistrate may direct by whom the costs of such summoning and examination shall be paid.

NOTES

New provision for local investigation, etc.—Sections 139 and 140 are new and additional to enable the Magistrate to direct local investigation and the examination of experts.

Procedure on order being made absolute and consequences of disobedience.

141. (1) When an order has been made absolute under section 136 or section 138, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act

directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code (45 of 1860).

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without such Magistrate's local jurisdiction and if such other property is without such jurisdiction, the order shall authorise its attachment and sale when endorsed by the Magistrate within whose local jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

Injunction pending inquiry.

142. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Magistrate may prohibit repetition or continuance of public nuisance.

143. A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860), or any special or local law.

NOTES

Sections 141 to 143 repeat in substance the provisions contained in sections 140, 142 and 143, respectively, of the old Code.

C. Urgent cases of nuisance or apprehended danger

Power to issue order in urgent cases of nuisance or apprehended danger.

144. (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such

Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof :

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6), is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order ; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

NOTES

Supreme Court's decision on old sub-section (6).—No change of substance in the old provisions of this well-known section has been made. The only notable change is in regard to the power of the State Government to extend the operation of the Magistrate's order beyond two months. The Supreme Court in *State of Bihar v. K.K. Misra* AIR 1971 SC 1667 had struck down old sub-section (6) as invalid because it conferred arbitrary powers on the executive by reason of the fact—

- a. that there was no provision for making any representation by the aggrieved party against the order of the State Government ;
- b. there was no indication that the Government's direction was of a temporary nature because no time-limit was laid down in the sub-section ; and
- c. there was no provision for appeal or revision.

Extension of Magistrate's orders.—To meet these objections, proviso to sub-section (4) has been modified, sub-section (6) has been newly added and sub-section (7) [corresponding to old sub-section (5)] has been amended, to the effect that the State Government cannot extend the Magistrate's order for a period of more than six months from the date of expiry of the initial order and that the State Government may, on its own motion or on the application of the aggrieved party, rescind or alter any such order extending the duration. It has also to afford opportunity to the applicant and record reasons for rejecting the application.

Other changes.—The other changes of less substantial character made in this section are :

- a. For obvious reasons powers under the section have been conferred only on the Executive Magistrates (DM, SDM). The power to empower Executive Magistrates has been retained only with the State Government and has not been given to the DM unlike in the old section.
- b. Sub-section (3) of the old section had used the expression "to the public generally when frequenting or visiting a particular place". This had given rise to uncertainties in respect of two points :
 - i. exact meaning of "particular place" ;
 - ii. whether persons residing in an area could be said to "frequent or visit" it.

High Courts of Bombay, Calcutta and Madras had taken limited or narrow view of these two concepts—See *Bhagubhai v. Emp.* AIR 1914 Bom. 198 ; *Abdul Majid* AIR 1934 Cal. 393 and *In re. Shivarama Murthy* AIR 1931 Mad. 242.

The words quoted above in the old section have therefore been amplified by "or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area".

Principles of exercising jurisdiction under the section.—The Supreme Court has, in *Md. Gulam Abbas v. Md. Ibrahim* AIR 1978 SC 422 dealt with the scope and applicability of the section and nature of orders which can be passed thereunder.

The orders to be passed under sub-section (3) are intended only to prevent dangers to life, health, safety or peace and tranquillity of the public. They are temporary orders lasting for not less than two months. Questions of title cannot be decided here at all. But previous judgments on them may have a bearing on the question whether and, if so, what order should be passed under the section. An action may be taken under the section which may interfere with an otherwise completely legal and permissible conduct and speech, if permitting the legal act constitutes a danger to human life, health or safety of others or to public peace and tranquillity. It may, however, be noted that the magistrate is not concerned with individual rights in performing his duty under the section but he has to determine what may be reasonably necessary or expedient in a situation of which he is the best judge.

If any community or sect is disposed to transgress the property rights of another habitually, the remedy is to seek injunction in a civil court. It is impossible for the court to give a decision on conflicting assertions for the first time either on a writ petition or in a proceeding under section 144. If public

place, etc., are not in danger, the magistrate concerned cannot act under section 144. He could only direct the parties to go to proper forum. But if the public safety, etc., are in danger, the magistrate can act under section 144. No hard and fast rules can be laid down in the matter. Each situation has to be judged on facts and circumstances existing at a particular place at a particular time.

D. Disputes as to immovable property

Procedure where dispute concerning land or water is likely to cause breach of peace.

145. (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute :

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed ; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding

all disturbance of such possession until such eviction ; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

NOTES

Power vested in all EMs.—Under the section as it stood before the new Code, a Magistrate of the specified class was empowered to intervene in disputes of the nature mentioned in the section. The new section vests the power in all Executive Magistrates.

The other substantial changes made in the section are enumerated below, sub-section-wise.

Defect in the old procedure rectified.—When the Code was amended in 1955, important changes were made in old section 145 with the object of curtailing the proceedings before the Magistrate and expediting the completion of the inquiry as to which party was in possession of the property. Before 1955 the parties were only required to put in written statements of their claims as respects the fact of actual possession of the subject of dispute and it was for the Magistrate to record at the inquiry all such evidence, oral and documentary, as may be produced by the parties. After the amendment of 1955, the parties had to put in such documents or to adduce, by putting in affidavits, the evidence of such persons as they relied upon in support of their claims ; and the Magistrate was normally expected to complete the inquiry and reach a conclusion on the basis of these documents and affidavits. The first proviso to sub-section (4) gave him a discretion to summon and examine any person whose affidavits had been put in by a party. The Law Commission observed :

“The revised procedure does not appear to have worked satisfactorily in practice. It is said that stereotyped affidavits prepared by lawyers on the same lines as the written statements are put in by both sides and these do not help

the Magistrate very much in reaching a sound decision. Examination of witnesses under the first proviso cannot in most cases be avoided and consequently there is no saving of the Court's time. The main object of the amendment, which is to get the inquiry completed rapidly, has not been achieved. On principle also, it is better that the Magistrate is required to decide the important fact of possession on the basis of oral evidence given before him and tested by cross-examination in the presence of parties. We therefore recommend that the procedure as it existed before 1955 should be restored."

Accordingly, the requirement of putting in documents and affidavits as contained in old sub-section (1) has been done away with.

Starting point for computation of two months.—At the completion of the inquiry under sub-section (4) [old] it was the duty of the Magistrate to decide whether any, and if so which, of the parties was at the date of the order made by him under sub-section (1) in actual possession of the property which was the subject of dispute. If, however, it appeared to the Magistrate that any party had, within two months next before the date of this order, been forcibly and wrongfully dispossessed, he might treat that party as if he had been in possession on the date of the order. Sometimes it happened that the Magistrate passed his first order under sub-section (1) some appreciable time after receiving the police report or other information about the dispute with the result that the two months' limit specified in the proviso did not assist the party wrongfully dispossessed.

In such circumstances, a difficulty had arisen as to the computation of the period of two months, *i.e.*, as regards the starting point for counting the period. The period of two months had to be counted backward. But the question arose whether the period was to be counted from the date of actual passing of the order by the Magistrate, or whether it could be counted from the date of the receipt of the police report or other information by the magistrates. The need for an amendment in this respect had been emphasized judicially—*Cf., Gangadhar v. Shyam Sunder* AIR 1958 Ori. 150. Several decisions of High Courts had put a "narrower interpretation". The Law Commission after examining these decisions opined that "the wider view should be preferred, because no litigant ought to suffer for the delay that takes place in court". The Commission accordingly recommended the starting point as the date of the receipt of the report or information "instead of the date of making the order" from which the period of two months should be counted

Publication of final order.—A new provision for publication of the final order under section 145(6) in the same manner as provided in sub-section (3), has been added. The Law Commission observed : "incidentally, this will have the effect of emphasising that a prosecution under section 188 of IPC, can be instituted if such order is violated".

Nature of proceeding.—In substance and effect a proceeding under section 145 is not for eviction of a person from any land but for the prevention of breach of the peace by declaring the party found in possession to be entitled to remain in possession until evicted therefrom in due course in law. Although the party who forcibly and wrongfully dispossessed the other party attracting the application of the proviso to sub-section (4) has to be factually and physically evicted from the property, by a legal fiction it is only for the

purpose of treating him in possession on the date of the preliminary order—*Chandu v. Sitaram* AIR 1978 SC 333.

No interim attachment under section 145.—Under the proviso to sub-section (4) of section 145 of the old Code, the Magistrate was empowered to attach the subject of dispute during the pendency of the proceeding. This provision for interim attachment has now been deleted so that during the pendency of the proceeding, the magistrate cannot attach the land in dispute—*Khadu Mahatu v. Smt. Prem Sundari* 1975 ILR Pat. 1064. It is not necessary for a magistrate to pass an order of attachment in every case. He can proceed under section 145 straightway and pass the final order. But as soon as he passes the order of attachment, consequences as provided in section 146(1) are to follow. A magistrate under section 145 adjudicates about possession for a limited purpose only and confines himself to the question of possession at the time of the passing of the preliminary order or two months prior to the date on which the report of the police officer or other information was received by the magistrate. There is no escape from the conclusion that after the magistrate has attached the property, the attachment has to be continued until the rights of the parties are determined by a competent court of civil jurisdiction, which can decide the title of the parties. The magistrate can withdraw the attachment only when at any time he is satisfied that there is no longer any likelihood of breach of peace with regard to the subject of the dispute—*Chandi Prasad v. Om Prakash Kanodia* 1976 Cr. LJ 209.

Proviso to section 145(4), a legal fiction.—Cases are not infrequent when a party has forcibly or wrongfully dispossessed the other party before the passing of the preliminary order. For that a legal fiction is introduced in the proviso to sub-section (4) of section 145. This has done away with the difficulty experienced by the courts when any party was dispossessed within two months next before the date on which the report was made to the magistrate or information received by him and for no fault of the complainant, the preliminary order is postponed and passed by the magistrate so that the period of two months is over, and on the date of the preliminary order in that contingency, the dispossession occurs more than two months next before that date. The result was that the advantage of the legal fiction introduced by the proviso could not be derived by a party. That flaw in the statute has been removed—*Roshanlal v. State* 1976 Cr. LJ 434.

When possession may be restored under section 145.—An order for restoration of possession to a party can be passed by a magistrate only at the conclusion of the enquiry while acting under the proviso to sub-section (4) of section 145. It is only in case a party has been forcibly and wrongfully dispossessed, either within two months next before the date on which the police report or other information is received by the magistrate or after that date and before the date of his order under sub-section (1), that there is power to order restoration of possession. Thus, even in the case of dispossession prior to the order and after that date on which information is given to the magistrate or to the police officer, the power can be exercised only at the time of passing final order. There is no power to order restoration of possession except in cases referred to in the proviso to sub-section (4) of section 145. The magistrate has, therefore, no jurisdiction to pass an order for restoration of possession to a party at the time of passing the preliminary order made on an application of the party who is admittedly not in possession at the time of application. There can be no question of any express bar to the passing of

such order for restoration as the jurisdiction of the magistrate is circumscribed by the provisions of the Code and such jurisdiction can be exercised only within the four corners of those provisions—*Kishore Chandra Mishrilal v. R.B. Ghumkar* 1976 Mah. LJ Note No. 1.

Whether evidence necessary under section 145(4).—The provision of section 145(4) is mandatory. An order by the magistrate declaring a party to be in possession without considering the written statements and affidavits filed but merely on a personal inspection made by him is illegal and is liable to be quashed—*Nandiram v. Chandiram* 1976 Cr. LJ 45.

Pendency of civil suit no bar to initiation of proceedings under section 145.—The pendency of a civil court is no bar to the initiation of a proceeding under section 145, but ordinarily proceeding under section 145 should be avoided when a civil suit is pending between the parties for determination of their rights—*Md. Muslehuddin v. Md. Salahuddin* 1976 Cr. LJ 1150.

Power to attach subject of dispute and to appoint receiver.

146. (1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof :

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908) :

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate—

- (a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him ;
- (b) may make such other incidental or consequential orders as may be just.

NOTES

The changes made in the provision contained in old section 146 are indicated sub-section-wise as under :

Procedure before and after 1955—Amendment.—Before 1955 the procedure under section 146 was short and simple. If the Magistrate decided that none of the parties was in possession, or if he was unable to satisfy himself as to which party was in possession, then he had the power to attach the property

“until a competent court has determined the rights of the parties thereto, or the person entitled to possession thereof”. The amendment of 1955 introduced a novel scheme, whereunder in such cases, besides attaching the property, the Magistrate had to draw up a statement of the facts of the case and to forward the record of the proceedings to a competent civil court, for deciding the question of possession. Further, the Magistrate had to direct the parties to appear before a civil court on a date to be fixed by the Magistrate. The object of this amendment was to shorten the overall time taken in the criminal proceedings and the subsequent civil proceedings.

Anomaly of post-1955 procedure.—The procedure was, however, anomalous, since it contemplated a reference to a civil court as a part of the proceedings in a criminal court. The main object of the proceedings under this Chapter was to take steps for immediately preventing a breach of the peace, and once those steps were taken, the proceedings in the criminal court should come to an end.

The Law Commission, therefore, recommended restoration of the former procedure. Accordingly, sub-section (1) empowers the magistrate to attach the disputed property until a competent court determines the rights of parties concerned. Attachment can be made for emergency also.

Appointment of a receiver.—This is a new provision conferring power on the magistrate to appoint a receiver or make any other appropriate arrangement to look after the attached property.

Distinction between Magistrate and Competent Court.—The word ‘Magistrate’ has been clearly used as something different from a ‘Competent Court’. Rights about possession are decided by Revenue Courts and Consolidation Courts apart from Civil Courts. There may be courts known by different names in different parts. It is for this reason that the words ‘Competent Court’ have been used instead of the words ‘civil court’ which can determine the rights of the parties with regard to the person entitled to the possession—*Chameli Prasad v. Om Prakash Kanodia* 1976 Cr. LJ 209.

Contingencies in which attachment order can be made.—Section 146(1) mentions the following three contingencies in which an order of attachment of the subject of dispute can be made :

- a. where the magistrate is satisfied that the case is one of emergency ; or
- b. if the magistrate after inquiry holds that none of the parties was in possession on the date of the preliminary order or within two months preceding it in case of dispossession ; or
- c. if the magistrate is unable to satisfy himself as to which of the parties was in possession on the appropriate date.

Parliament has equated the first contingency, i.e., after passing of a preliminary order ‘if the magistrate is satisfied that it is a case of emergency’, at par with the other two contingencies. No further inquiry is possible in the two other contingencies. Therefore, there is no occasion to contend that when an order is passed on the first of these contingencies, the proceeding under section 145 survives and an inquiry as envisaged in that section is yet to be undertaken. Besides, the language of the provision is clear enough to support the conclusion that the dispute before the criminal court comes to an end and which party is entitled to possession has to be determined by the competent court—*Dand Pani Pala v. Madan Mohan Pala* 1976 Cr. LJ 2014. Attachment

order cannot be made simultaneously with preliminary order—*Laxman v. Bahim Khan* 1976 Cr. LJ 1492.

Requirement to be complied with under section 146(1).—Before passing an attachment order under section 146(1) the magistrate must hear both the parties and apply his independent mind to the question as to whether any of the three contingencies mentioned in the section existed. Admittedly in some cases and situations immediate action would have to be taken to avoid breach of the peace. But merely passing an attachment order or, in other words, making the property *custodia legis*, a breach of the peace cannot be avoided; to do that there are other provisions in the Code and he can also depute police force for the purpose. Hence the order of the magistrate attaching property without applying his independent mind to the question as to whether any such order was at all called for, is illegal; so also the magistrate's direction to parties to file written statements and documents after having attached the subject of dispute—*Khedu Mahatu v. Smt. Prem Sundari* [1975] ILR Pat. 1064.

From section 146(1), it appears that an order for attachment of property on ground of emergency can be made after making the preliminary order under section 145(1). It does not appear necessary that the two orders, viz., preliminary order and subsequent attachment order must be written out separately. Where the magistrate has exercised his independent mind on both these questions separately in passing the order, merely because half the order was not written out first and the second half was written out subsequently on separate pieces of papers, it does not imply that the order is vitiated. Since the subsequent order of attachment has been made only after the first preliminary order has been passed to the effect that there was an apprehension of the breach of peace, the non-recording of two separate orders would at the most amount to an irregularity, which would be curable under section 465—*Syed Ahmed v. Rais Ahmed* 1977 Cr. LJ 450.

Attachment order bar to determination of possession dispute by magistrate.—When the magistrate attaches the subject of the dispute the property becomes *custodia legis* and, therefore, provision has been made that the magistrate may, after he has attached property, make such arrangement as is necessary and proper for looking after the property or if he thinks fit appoint a receiver thereof. Therefore, after the magistrate has attached the property, he is not entitled to proceed to decide under section 145 as to which of the parties is in possession thereof. In the circumstances, the order of the magistrate directing the parties to adduce evidence in order to enable him to decide the question of possession after he has attached the subject-matter of dispute under section 146(1) is illegal—*Md. Muslehuddin v. Md. Salahuddin* 1976 Cr. LJ 1150.

When attachment to cease.—Under the new Code there is no interim attachment. The attachment is to be made under any of the three contingencies contemplated in section 146(1). This attachment has to cease either when the competent court decides the dispute between the parties, or when the magistrate is satisfied that there is no longer any likelihood of breach of the peace with regard to the possession over the subject of dispute. Once the magistrate decides that one of the three contingencies aforesaid exists in the proceeding under section 145, he has to stay his hands after passing an order under section 146—*Khedu Mahatu v. Smt. Prem Sundari* [1975] ILR Pat. 1064.

Anomaly in interpreting section 146(1) literally.—Section 146(1), if literally interpreted, may lead to the inference that even in cases of attachment on account of emergency, the magistrate's jurisdiction ceases because under the new Code, power has been given to the Magistrate to continue attachment even after proceedings have been consigned and therefore, all the three contingencies, in which the magistrate can attach the subject of dispute, have been given by the Legislature in section 146(1). The underlying object of Chapter X of the Code is to maintain peace and tranquillity and it is therefore certainly desirable that the question of possession should be decided by the magistrate whenever possible and as quickly as possible in order to avoid any breach of the peace. The attachment in the other two cases is meant to maintain peace, pending decision of the rights of the parties by competent court. It is, therefore, evident that a literal interpretation sought to be put on section 146(1) will not only lead to an anomalous situation but will also be inconsistent with the main provisions contained in section 145—*Ram Adhin v. Shyama Devi* 1977 Cr. LJ 453.

Whether proceedings under section 145 terminate when order under section 146 is passed.—Section 146 is a measure to prevent breach of peace. This object is satisfied the moment the magistrate decides to attach the disputed property. Once the magistrate makes the attachment order under section 146(1), the proceedings pending under section 145 come to an end. The magistrate can later on withdraw the attachment if he feels satisfied that there is no likelihood of breach of peace but then also the proceedings under section 145 will come to an end. In case the attachment continues, the magistrate has power to appoint a receiver under section 146(2)—*Hakim Singh v. Girwar Singh* 1976 Cr. LJ 1915 ; *Dand Pani Pala v. Madan Mohan Pala* 1976 Cr. LJ 2014.

The magistrate does not become *functus officio* merely due to his passing an attachment order during the pendency of the proceedings before him because he considers the case to be one of emergency. The magistrate attaching the subject of dispute on the ground of emergency at any time after making the preliminary order would be bound to proceed under section 145(6). The emergency attachment would come to an end on passing the final order. In case the magistrate cannot come to a definite conclusion regarding the particular party being in possession, the emergency attachment would continue until adjudication by the civil court determining the rights of the parties to the dispute relating to the subject matter of dispute—*Gijtan A. D'Souza v. State of Maharashtra* 1977 Mah. LJ Note No. 2.

Dispute concerning right of use of land or water.

147. (1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.

Explanation : The expression "land or water" has the meaning given to it in sub-section (2) of section 145.

(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists ; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right :

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub-section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) ;

and when in any proceeding commenced under sub-section (1) the Magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 145.

NOTES

The changes made in the provision contained in old section 147 are detailed below sub-section-wise :

Sub-section (1).—A clarificatory *Explanation* has been added.

Sub-section (3).—There was a conflict of decisions as to the scope of the words “prohibiting an interference with the exercise of such right” in old section 147(2) which have been retained in the present sub-section (3) also—See *Hem Chandra* AIR 1942 Cal. 244 ; *Shantilal* AIR 1954 Bom. 368 ; *Ram Ishwar* AIR 1965 Pat. 17 contrasted with *Abdul Wahab* AIR 1951 All. 238 ; *Angappa* AIR 1959 Mad. 28 ; and *Chumanda* AIR 1914 Lah. 210. The position in this respect has been clarified so as to empower the court to order “removal of any obstruction” in the exercise of such right provided the conditions laid down in the proviso are satisfied—See *Thambuswamy Padayachi v. Sridharan* 1976 Mad. LJ (Cr.) 555.

In the proviso, instead of “three months next before the institution of the inquiry”, it has been provided “three months next before the receipt of the police report or other information” to bring it in line with the proviso to new section 145(4).

Sub-section (4).—A new provision allowing the conversion of proceedings under section 147 into those under section 145 and *vice versa* has been made for the following reasons :

“It may happen that a party makes an application under section 145, but it turns out in the proceedings that what is in question is not a right to *possession* to a land or water, but a right to its *user*—in which case the party should have resorted to section 147 instead of section 145. The converse situation may arise, where a party resorts to section 147 in a case where section 145 was applicable. There was a controversy—See *K.E. v. Abdullah* AIR 1949 Nag. 275 ; *Turab Ali* AIR 1933 Lah. 145 ; *Anath v. Wahid Ali* AIR 1925 Cal. 1022—whether, in such situation, it was competent for the Magistrate to convert the proceedings brought under one of these sections into the proceedings under the other relevant section.” Hence the new provision empowering the Magistrate to proceed under the provision which is found to be really applicable irrespective of the view taken at the stage of initiation of proceedings.

Executive magistrate whether successor-in-office of magistrate.—When it was contended that the enquiry pending for long under section 147 of the old Code before the new Code came into force should be disposed of by the DM, SDM or Magistrate of the first class who alone was competent to dispose of the proceedings and as such the EM under the new section 147 was not so competent, it was held that since under section 147 of the new Code it was the EM who could dispose of an enquiry under that section, the EM must be treated as successor-in-office of the magistrate of the description given in section 147 of the old Code—*Sheo Nandan Singh v. Thakur Prahlad Singh* 1976 Cr. LJ 1781.

Local inquiry.

148. (1) Whenever a local inquiry is necessary for the purposes of section 145, section 146 or section 147, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under section 145, section 146, or section 147, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of pleaders' fees, which the Court may consider reasonable.

NOTES

This section corresponds to section 148 of the old Code.

CHAPTER XI

PREVENTIVE ACTION OF THE POLICE

Police to prevent cognizable offences.

149. Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Information of design to commit cognizable offences.

150. Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Arrest to prevent the commission of cognizable offences.

151. (1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

Prevention of injury to public property.

152. A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

Inspection of weights and measures.

153. (1) Any officer in charge of a police station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

NOTES

Sections 149 to 153 are identical with the sections bearing the same numbers in the old Code. Only one important change has been made and, that is new sub-section (2) has been added to section 151. In the view of the wide-spread criticism and misgivings expressed more especially the abuse and misuse of the power to make preventive arrest by the police. Hence, as a check and restraint on that power, the sub-section (2), has been added.

CHAPTER XII

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

Information in cognizable cases.

154. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

NOTES

Statutory obligation to supply copy of FIR.—Two important changes have been made in the old section 154 to which this section corresponds. Under the previous provision, the FIR had to be reduced into writing and the informant's signature had to be obtained thereon. The informant, however, was not entitled to get a copy of the report then and there. In some of the States police rules required a copy of the FIR to be given to the informant. The Law Commission considered it a healthy practice and recommended its placing on statutory basis. New sub-section (2) has therefore been added.

Check against non-recording of FIR.—New sub-section (3) has been added to check the refusal of the police in recording FIR. In such an eventuality the aggrieved person has been given a right to send his information by post direct to the S.P. for investigation.

Information as to non-cognizable cases and investigation of such cases.

155. (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

NOTES

The following changes have been made in the old section 155 to which this section corresponds.

Recording of information.—Old sub-section (1) provided that the information about a non-cognizable offence should be recorded by the officer in charge of the police station. The Joint Committee of Parliament considered that in relation to a non-cognizable offence it was not necessary “to insist that the record should be made only by the officer in charge of the police station”. The words “or cause to be entered” have therefore been added in the sub-section.

Reference to classes of Magistrates omitted.—Reference to different classes of Magistrates as contained in old section has been omitted for obvious reasons.

Power of police to investigate composite case.—This is a new provision. The genesis of this provision has been explained by the Law Commission as follows :

“A non-cognizable offence can be investigated by the police on the orders of a Magistrate, and once such an order is given a police officer has in that investigation the same powers as he has while investigating a cognizable offence. Cases often occur when during the investigation of a cognizable offence it appears that a non-cognizable offence also has been committed and the question then arises whether the investigation can proceed without a Magistrate’s order.”

The Law Commission, therefore, recommended that where the case was a composite one, that is to say, was a non-cognizable one and also involved cognizable offence, investigation should proceed in respect of both the offences and it should *not* be treated as a non-cognizable case.

Incidentally, this provision also codifies the law as settled by the Supreme Court in *Pravin Chandra v. State* AIR 1965 SC 1185.

Police officer’s power to investigate cognizable case.

156. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

Procedure for investigation.

157. (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which

he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender :

Provided that—

- (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;
- (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to subsection (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

Report how submitted.

158. (1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

Power to hold investigation or preliminary inquiry.

159. Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code.

Police officer's power to require attendance of witnesses.

160. (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case ; and such person shall attend as so required :

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

NOTES

Rule making-power.—Sections 156 to 160 are almost the same as sections bearing the same numbers of the old Code. Sub-section (2) of section 160 is new sub-section. It confers an enabling power on the State Government to make rules for reimbursing prosecution witnesses.

Examination of witnesses by police.

161. (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section ; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

NOTES

Obligation to answer truly.—Under sub-section (2) of section 161 of the old Code, every person examined by the police officer was required to answer every question put to him but there was, at that stage, no legal obligation to speak the truth. In this connection the Law Commission observed :

“We recognise that a legal obligation to speak the truth carries with it the liability to punishment if the truth is not spoken. We think, however, that this is how it should be. If it is necessary to provide that information must be supplied by every person questioned by the police, the law must also require that the information is not false or misleading. There seems no point in saying to every citizen in clear terms that he must answer every question put to him by the police but need not tell the truth.”

Further, “we strongly feel that the law should not be so framed as to give the impression that a person appearing before a competent authority is free to tell lies”. Following these observations, the word “truly” has been inserted after the words “bound to answer” in section 161(2).

Obligation to keep true record of statements.—As before, sub-section (3) continues to leave a discretion to the police officer to reduce in writing any statement made to him during the course of examination of witness. But if he reduces it in writing then it has been made clear that he shall make the ‘true’ record thereof to ensure its accuracy, since such statement may be used to contradict prosecution witnesses as provided in the proviso to section 162(1).

Statements to police not to be signed : Use of statements in evidence.

162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it ; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872) ; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation : An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

NOTES

Omission to state when contradiction.—The *Explanation* has been added by the Joint Committee of Parliament “in view of the doubt on the question whether any omission in a statement recorded by the police during investigation would amount to a contradiction, with reference to what the witness states during the trial”—See also *Tahsildar Singh v. State of U.P.* AIR 1959 SC 1012 on the subject.

Reading over of a police statement to a witness before he enters witness box—Effect and value of.—The Gujarat High Court in *Nathu v. State* AIR 1978 Guj. 49 held that while the practice of reading over police statements to witnesses before they enter the witness box is not a healthy one, such statements (i.e., statements recorded by the police during investigation under Chapter XII) do not become inadmissible and their probative value has to be judged in the circumstances of each case. Reading over of the police statement to the witness before he enters the box does not amount to contravention of the prohibition contained in section 162(1). But the fact of reading over of the statement may affect the probative value of the evidence of witness. Nor does it amount to use of such statement contrary to section 162(1).

The user contemplated by the words “used for any purpose...at any inquiry or trial” contained in section 162(1) is actual user in the proceedings in the court and not user *de hors* the court proceedings. When the statement recorded during the course of investigation by the police is used by a witness before entering the witness box, it cannot be said that the statement is used at an enquiry or trial before the court. Reading of such statement to a witness before

he steps in the box also does not amount to contravention of the bar imposed by this section so as to become inadmissible. To interpret otherwise, would give a powerful weapon in the hands of a defence lawyer in handling a witness won over. Moreover, the Legislature could have never contemplated that the courts should launch a subsidiary inquiry on collateral facts as to whether a witness had referred to his statement made during investigation before entering the witness box.

No inducement to be offered.

163. (1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872 (1 of 1872).

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will :

Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of section 164.

NOTES

Object of proviso to sub-section (2).—Section 163 encourages attempts at confessions, while section 164 discourages them. Section 163 says that cautions are not necessary, but section 164 (in effect) says that they are necessary. These discrepancies were pointed out in *In re. Vella Monji* AIR 1932 Mad. 431. It has, therefore, been provided in the new proviso to sub-section (2) of section 163 that the sub-section is subject to section 164(3).

Recording of confessions and statements.

164. (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial :

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him ; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession ; and the Magistrate shall make a memorandum at the foot of such record to the following effect :—

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A.B.
Magistrate."

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case ; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

NOTES

The salient changes, apart from rearrangement of sub-sections, made in the old section 164 are :

Power to record confession on JM only.—Power to record confessions has been conferred on all Judicial Magistrates instead of only on specified Magistrates unlike under old sub-section (1). Hence the words "not being a police officer" in that sub-section have also been omitted.

No police officer to record confession.—A proviso has been added to sub-section (1) to make it clear that a police officer on whom the powers of a magistrate have been conferred should not record any confession.

No remand to police custody.—As observed by the Joint Committee of Parliament :

"As a further safeguard to ensure that the confession is voluntary, a new sub-clause has been added prohibiting a remand to police custody of a person who expresses his unwillingness to make the confession when produced before the Magistrate. This does not of course mean or imply that remand has to be made if the accused wants to confess." [sub-section (3)]

Power to administer oath.—Sub-section (5) incorporates the provision of old section 164(2) with the additional provision conferring power on the Magistrate to administer oath to the person whose statement is recorded by him "to lend it some sanctity".

Compliance with section 164 mandatory.—The failure to comply with section 164 or with the High Court circulars will not render the confessions inadmissible in evidence. Relevance and admissibility of evidence have to be determined in accordance with sections 24 to 28 of the Evidence Act. If a confession does not violate any one of the conditions operative under these sections, it will be admissible in evidence. But as in respect of any other admissible evidence, oral or documentary, so in the case of confessional statements which are otherwise admissible, the court has still to consider whether they can be accepted as true. If the facts and circumstances surrounding the making of a confession appear

to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession even if it is admissible in evidence. That shows how important it is for the magistrate who records the confession to satisfy himself by appropriate questioning of the confessing accused, that the confession is true and voluntary. A strict and faithful compliance with section 164 of the Code and with the instructions issued by the High Court affords in a large measure the guarantee that the confession is voluntary. The failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements—*Dagelu v. State of Maharashtra* AIR 1977 SC 1579.

Search by police officer.

165. (1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

When officer in charge of police station may require another to issue search-warrant.

166. (1) An officer in charge of a police station or a police officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections (1) and (3) of section 165.

(5) The owner or occupier of the place searched shall, on application, be furnished free of cost with a copy of any record sent to the Magistrate under sub-section (4).

NOTES

Copies of lists to be supplied free of cost.—Sections 165 and 166 are identical with sections 165 and 166 respectively of the old Code. In sub-section (5) of each, it has been provided that copies of the lists should be supplied free of cost instead of on payment as was the case under old sub-section (5) of each of these sections.

Procedure when investigation cannot be completed in twenty-four hours.

167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole ; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

Provided that—

[(a) *the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—*

(i) *ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years ;*

- (ii) *sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter ;]*
- (b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him ;
- (c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

[Explanation I: *For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a) the accused shall be detained in custody so long as he does not furnish bail.*]

[Explanation II] : If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.

[(2A) *Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate ; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order ; and where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2) :*

Provided *that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.]*

- (3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.
- (4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.
- (5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the

accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

NOTES

Amendments in section 167.—Paragraph (a) to the proviso to sub-section (2) of section 167 has been amended by the Amendment, Act, 1978, to empower the Magistrate to authorise detention, pending investigation, for an aggregate period of 90 days in cases where the investigation relates to offences punishable with death, imprisonment for life or imprisonment for not less than ten years or more and up to 60 days in any other case.

An *Explanation* has also been inserted to clarify that when the accused person does not furnish bail, he would continue to be in detention.

A new sub-section (2A) has been inserted empowering an Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred under section 13 or section 18, to make an order for remand of an accused for a period not exceeding seven days in the aggregate in cases where a Judicial Magistrate is not available. The period of detention ordered by such a Magistrate is to be taken into account in computing the total period specified in paragraph (a) of the proviso to sub-section (2).

Amendment applicable to pending investigation.—Section 14 of the Code of Criminal Procedure (Amendment) Act, 1978, makes above amendments applicable to pending investigations as well. The section reads as follows :

“14. *Amendment of section 167 to apply to pending investigation.*—The provisions of section 167 of the principal Act, as amended by this Act, shall apply to every investigation pending immediately before the commencement of this Act, if the period of detention of the accused person, otherwise than in the custody of the police, had not, at such commencement, exceeded sixty days.”

Implications of new provisions under the new Code.—Section 167 corresponds to the section bearing the same number of the old Code. The new Code has, however, made new provisions, implications of which are explained in the succeeding paragraphs

Detention in judicial custody and for 90 or 60 days only.—Paragraph (a) provides two safeguards to a person charged with an offence under the Code and who is to be detained for investigation. They are :

- a. Detention in judicial custody and not in police custody.
- b. Total period of detention would not be more than 90 days in cases where investigation relates to offences punishable with death, imprisonment for life or for not less than ten years, and 60 days in any other case and the accused should be released on bail after the expiration of that period.

The Joint Committee had originally fixed 90 days as the maximum detention period and in doing so had observed :

“There is a persistent complaint that investigations are not being completed quickly by the police and that in many cases accused persons are kept in detention for very long periods causing hardship and misery to such under-trial prisoners and their families. Although some provisions are already there in the existing Code requiring investigations to be completed quickly, they have not had the desired effect. The Committee feels that a drastic remedy is called for in this behalf.”

As has been observed by the Supreme Court in *Natabar Parida v. State of Orissa* AIR 1975 SC 1465, section 167 has made some drastic departure from the old Code. While retaining the provision of forwarding the accused to the nearest Magistrate (of course, under the new Code, to the Judicial Magistrate) and while authorising the Magistrate to remand the accused to either police or judicial custody for a period not exceeding 15 days, proviso (a) has been added.

Mandatory nature of section 167(2)—Proviso (a).—The law as engrafted in proviso (a) to section 167(2) of the new Code confers the powers of remand to jail custody during the pendency of the investigation. The command of the Legislature in proviso (a) is that the accused person has got to be released on bail if he is prepared to and does furnish bail and cannot be kept in detention beyond the period of 60 days [*now 90 days in the case of heinous crimes vide Amendment Act, 1978*] even if the investigation may still be proceeding. In serious offences of criminal conspiracy—murders, dacoities, robberies by inter-state gangs or the like—it may not be possible for the police, in the circumstances as they do exist in the various parts of our country, to complete the investigation within the period of 60 days [*now 90 days in the case of heinous crimes vide Amendment Act, 1978*]. Yet the intention of the Legislature seems to be to grant no discretion to the court and to make it obligatory for it to release the accused on bail. Of course, it has been provided in proviso (a) that the accused released on bail under section 167 will be deemed to be so released under the provisions of Chapter XXXIII and for the purposes of that Chapter. That may empower the court releasing him on bail, if it considers necessary so to do, to direct that such person be arrested and committed to custody as provided in sub-section (5) of section 437 occurring in Chapter XXXIII. It is also clear that, after the taking of the cognizance the power of remand is to be exercised under section 309 of the New Code. But if it is not possible to complete the investigation within a period of 60 days [*now 90 days in the case of heinous crimes vide Amendment Act, 1978*] then even in serious and ghastly types of crimes the accused will be entitled to be released on bail. Such a law may be a “paradise for the criminals”, but surely it would not be so, as sometimes it is supposed to be because of the courts. It would be so under the command of the Legislature.

When section 167 attracted.—But the question in this case is whether during the pendency of the investigation which started before coming into force of the new Code the appellants can press into service proviso (a) to section 167(2) of

that Code and claim to be released on bail as a matter of right when they are prepared to furnish bail. The answer to this question depends on the interpretation of sections 167 and 484 of the new Code. Unlike the wordings of section 428 the language of section 167(1), which will govern sub-section (2) also, is "whenever any person is arrested", suggesting thereby that the section would be attracted when the arrest is made after coming into force of the Act, while the expression used in section 428 is "where an accused person has, on conviction, been sentenced.....". Interpreting such a phrase it has been held in the case of *Mr. Bouchar Pierre Andre v. Superintendent, Central Jail, Tihar, New Delhi* AIR 1975 SC 164:

"This section, on a plain natural construction of its language, posits for its applicability a fact situation which is described by the clause "Where an accused person has on conviction, been sentenced to imprisonment for a term". There is nothing in this clause which suggests, either expressly or by necessary implication, that the conviction and sentence must be after the coming into force of the new Code of Criminal Procedure."

"We may, however, hasten to add that in spite of the phrase "is arrested" occurring in section 167(1), since the old Code has been repealed by sub-section (1) of section 484 of the new Code, the provision would have applied, *a fortiori*, if the savings provided in sub-section (2) would not have applied to the situation with which we are concerned in this case. In our judgment clause (a) of sub-section (2) of section 484 does apply."

Pending investigation not covered by new section 167(2)—Proviso (a).—"Immediately before the 1st day of April, 1974 the investigation of this case was pending. Saving clause (a), therefore, enjoins that the said investigation shall be continued or made in accordance with the provisions of the old Code. The police officer, therefore, making the investigation has to continue and complete it in accordance with Chapter XIV of the old Code. Section 167 of that Code could not enable the Magistrate to remand the appellants to jail custody during the pendency of the investigation. The police could seek the help of the Court for exercise of its power of remand under section 344 (old) bringing it to the notice of the Court that sufficient evidence had been obtained to raise a suspicion that the appellants may have committed an offence and there will be hindrance to the obtaining of further evidence unless an order of remand was made. As we have said above, invoking the power of the Court under section 344 of the old Code by the investigating officer would be a part of the process of investigation which is to be continued and made in accordance with the old Code. That being so, we hold that the appellants in this case cannot claim to be released under proviso (a) to section 167(2) of the new Code."

Physical production of accused—Paragraph (b) of the Proviso to sub-section (2).—This paragraph provides that the physical production of the accused is necessary before he is remanded to the custody. The *Explanation* has been added in order that the requirement as to the physical production of the accused at the time of remanding him to the custody is not evaded and also to make it clear that the fact of production of the accused can be proved by the signature of the accused on the detention order.

Stoppage of investigation and recommencement of investigation in certain cases.—On sub-sections (5) and (6), the Joint Committee of Parliament had observed:

"A further provision has been made in the newly added sub-clause (5) to the effect that if the investigation is not completed within a period of six months

from the date on which the accused was arrested, in a case where the offence is not punishable with imprisonment for more than two years, the Magistrate may pass an order stopping further investigation and discharging the accused unless the investigating officer satisfies the Magistrate that there are special reasons for the continuance of the investigation in the interest of justice. A new sub-clause, namely, sub-clause (6) has been inserted to empower the Sessions Judge to direct the recommencement of investigation which was stopped under sub-clause (5).

The Committee trusts that with these provisions the chronic malady of protracted investigation would be a thing of the past."

Provisions explained with reference to cases.—The provisions of the section as it stood before the Amendment Act, 1978, are elucidated below with reference to the cases.

Object of the section.—The provisions contained in paragraph (a) of the proviso to sub-section (2) are mandatory in nature and are made to provide a satisfactory solution of the problem of delayed investigation and to avoid unnecessary detention of the accused persons for very long periods causing great hardships and misery to them—*Khindwan v. State of Rajasthan* 1975 Cr. LJ 1984.

Mandatory provision.—There may be delay in investigation on account of no fault of the police or the accused may have committed an offence punishable with death but these cannot be grounds for detention of the accused beyond 60 days because of new provision in proviso (a) to section 167(2) and section 173(8)—*State of Rajasthan v. Bhanwaru Khan* 1975 Cr. LJ 1981. In view of the mandatory nature of section 167(2), detention of the accused beyond 60 days is illegal and the accused is entitled to be enlarged on bail—*Prem Raj v. State of Rajasthan* 1976 Cr. LJ 455. This mandatory provision is not controlled by section 437(1)—*Ved Kumar Seth v. State of Assam* 1975 Cr. LJ 647 and *Vakhat-sinh v. State of Gujarat* 1975 Guj. LR 1034.

If the police investigation is not completed within 60 days from the date of arrest, and the accused petitioner is not released on bail in spite of his bail application, then it amounts to magistrate's failure to comply with the mandatory provision of section 167(2)(a)—*Khindwan v. State of Rajasthan* 1975 Cr. LJ 1984.

The magistrate may authorise the detention of the accused in such custody as he thinks fit for not more than 15 days on the whole. But he can authorise the detention of the accused otherwise than in police custody beyond the period of 15 days, if he is satisfied that there are adequate grounds to do so. It should not however exceed a total period of 60 days. On the expiry of that period of 60 days, the accused shall be released on bail if he is prepared to and does furnish bail—*T.V. Sarma v. Kamala Devi* 1975 ILR AP 589.

If charge-sheet is not filed within a period of 60 days, the accused has to be released on bail. In such a case granting of bail itself is mandatory and it cannot be refused on the grounds stated in section 437 as the same does not apply—*Mohammad Shafi v. State* 1975 Cr. LJ 1319 and *Baldev Singh v. State of Punjab* 1975 Cr. LJ 1662. There is also no power either under section 167 or section 309 to remand him to custody for a further period without laying a charge against him—*Koteshwarrao v. State of Kerala* 1975 Mad. LJ (Cr.) 366. This is so irrespective of the gravity of offence—*Ramsaran v. State of Maharashtra*, 1976 Mah. LJ 432. If, however, the police wants the detention of a person for more

than 60 days after the Magistrate passed order, the police must have completed the investigation ; otherwise they will have to move not the Magistrate but the Court of Session or High Court under section 439 or section 482—*State of Maharashtra v. Tukaram Shiva Patil* 1977 Cr. LJ 394. If the detention itself is to become without any authority of law in cases where the accused has been in custody for more than sixty days after the expiry of 60 days, there was no question of providing in the same section for enlarging an accused person on bail if he was prepared to and did furnish bail—*Baba Ajibadas v. State of Bihar* 1975 Pat. LJR 109.

In a judgment, the High Court of Delhi has observed that a Magistrate is bound to record an order for granting bail to an accused if the investigation has not been completed within 60 days. The accused is not required to file a formal application. It would then be left to the accused to furnish the sureties or personal bonds required of him. In this case, the High Court released on bail Noor Mohammed of 17 years old who had been granted bail even after the expiry of 60 days although no charge-sheet had been filed and further the Additional Sessions Judge had rejected a bail application observing that the charge-sheet was to be filed within a day or two. The court said that in view of the mandatory nature of section 167(2)(a) the Magistrate had no power to detain an accused after a period of 60 days unless he got a refusal. But, 'by keeping quiet and not applying for bail the accused does not refuse'. To get the refusal, the Magistrate must first make an order. Neither section 436(1) nor section 437(1) relating to bail enjoins the filing of an application. An application is needed only during the remand period. If the prayer for remand fails, the inevitable result would be that the accused must be released on bail. Thus, the accused can always obtain bail without an application by merely showing that the prosecution has not established sufficient grounds for remand.

Section 309(2) relating to postponement of a trial does not override section 167(2)(a) ; in fact the former section is subservient to the latter. As such, the court disagreed with the view that if a charge-sheet was filed after 60 days' period but before the accused had been released on bail, then the right to bail under section 167(2)(a) was lost.

If detention continued beyond 60 days and no opportunity was given to the accused to furnish bail, the custody was illegal. The question of furnishing bail arose only after the order was made. The accused therefore had to do nothing but wait [Judgment delivered on 27-4-1978].

Where a person applied under section 167(2) for bail on the expiry of 60 days after the date of his arrest on the ground that no charge-sheet had been filed within this period, the Magistrate would be acting wrongly in refusing to grant bail merely on the ground that there was a prohibition against his release under section 437(1) as he was satisfied that there were grounds for believing that the accused was guilty of an offence punishable with death or imprisonment—*Mohd. Shafi v. State* 1975 Cr. LJ 1309.

A condition attached to an order granting bail under section 167(2)(a) that 'the order shall be deemed to be vacated and cancelled as soon as the charge-sheet is received' is illegal. The bail granted under section 167(2) has thus the same incidents as the bail granted under Chapter XXXIII and is accordingly to remain valid till it is cancelled on the grounds known to law. The receipt of a charge-sheet in court can by itself be no ground for cancellation of the bail—*Ram Pal Singh v. State of U.P.* 1976 Cr. LJ 288.

Detention beyond 60 days not illegal per se.—Section 167(2) creates a right in favour of the accused to be released on bail if he is prepared to and does furnish bail. If the accused is not prepared to and does not furnish bail, there being no charge-sheet filed, it is open for the Magistrate to remand him for such further period as he deems fit which, according to him, is necessary for completing the investigation. The detention of the accused beyond a period of 60 days is therefore not *ipso facto* illegal. Mere preparedness of the accused to furnish bail is also not enough. A further duty is enjoined upon him to furnish bail—*Shrawan v. State of Maharashtra* 1975 Mah. LJ 654 and *Mishrilal Onkarlal v. Judl. Mag. 1st Class* 1975 MP LJ 325.

Application for bail whether necessary.—As has been pointed out in the preceding paragraph, the accused is not to be allowed to walk out of jail and his detention will continue to be legal till he is prepared to and does furnish bail. In other words, the Magistrate shall not authorise detention of the accused person in custody beyond 60 days, provided that the accused applies for bail on the expiry of the said period of sixty days or offers to and does furnish bail—*Lakshmi Brahman v. State* 1976 Cr. LJ 118 and *Heeraman v. State of U.P.* 1975 Cr. LJ 1508. However, in *Baldev Singh v. State of Punjab* 1975 Cr. LJ 1662, it has been observed that in view of the terms of the statute, the presentation of an application is irrelevant and unnecessary. The Magistrate is himself duty bound and the accused entitled as of right to be so released on furnishing bail provided the requisite condition of detention beyond 60 days is satisfied—See also *Jivan Lal v. State of Punjab* 1975 Cr. LR 626.

Computation of period of 60 days.—While computing the period of 60 days referred to in proviso (a) to sub-section (2) of section 167, the period of detention under section 57 (24 hours and time of journey from place of arrest to Magistrate's court) has to be excluded. A calendar day as a unit of time is the interval from one midnight to another. It is not correct to take into consideration fractions of two days to make up one day.—Thus, the day on which the custody is granted cannot be excluded—*Tarsen Kumar v. State* 1975 Cr. LJ 1303 and *L.R. Chawla v. Murti* 1976 Cr. LJ 212.

Even if the challan papers were left with the clerk it was of no consequence as the papers were actually presented before the Magistrate for the first time on the date on which the Magistrate passed the order in question. Since it was beyond 60 days, the accused was entitled to bail—*Het Ram v. State* 1975 Cr. LR 658.

Court competent to release on bail.—Section 167(2) authorises remand up to a maximum period of fifteen days, but as explained in *Natabar Parida's* case AIR 1975 SC 1465, further remand is permissible in view of the proviso to section 167(2). The expression 'Magistrate' in the proviso means the Magistrate having jurisdiction to try the case. It is thus clear that although the power to remand up to fifteen days may be exercised by a Magistrate who does not have jurisdiction to try the case, the power of remand thereafter can only be exercised by a Magistrate who has such a jurisdiction. That being the position, it follows that an Executive Magistrate cannot order remand of an accused who has been produced before him in conformity with the provisions of law for a period exceeding 15 days in all.

Again an Executive Magistrate has no jurisdiction to grant bail except in respect of offences punishable with fine or imprisonment up to three months. In relation to a person not accused of such offences, the Magistrate, who has jurisdiction to take cognizance, has power to grant bail even when the accused is in custody

on the basis of an order or remand passed by an Executive Magistrate—*Singeshwar Singh v. State of Bihar* ILR 1976 Pat. 391.

Effect of charge-sheet after 60 days.—Even if no charge-sheet was submitted within sixty days but was submitted before the accused applied for bail, it would not be open to the accused to claim that he was entitled to bail as of right by invoking section 167(2)(a) because as soon as the charge-sheet was submitted, the period of remand pending investigation came to an end and provisions of section 167(2)(a) would cease to apply to such a case, and in such a case bail could be granted only on merits—*Heeraman v. State of Uttar Pradesh* 1975 Cr. LJ 1508 and *Shrawan v. State of Maharashtra* 1975 Mah. LJ 654.

In *Umedsinh Vakmatji Jadeja v. State* AIR 1977 Guj. 11, the High Court of Gujarat has held that if an application is made under section 167 for bail by an accused person who is detained in custody pending investigation for a period exceeding 60 days, he is entitled to bail. But if pending such an application for bail a charge-sheet is filed in the court, the investigation comes to an end and so also the power of the Magistrate of granting bail to the accused under section 167(2). The Magistrate then can exercise power of granting bail only under section 437. The Magistrate to whom an application for bail under section 167(2) is made has to take the subsequent event into consideration, namely, the filing of the charge-sheet. Because of the deeming fiction contained in section 167(2)(a) all the provisions of Chapter XXXIII including the provisions of section 437(5) shall apply to a case in which bail has been granted under section 167(2)(a).

In a case where the accused has, during the investigation, applied to the Magistrate concerned for being released on bail under section 167, on the ground that he has been in the jail custody for more than 60 days, his prayer cannot be turned down merely because subsequently the police submits a charge sheet against the accused—*Lakshmi Brahman v. State* 1976 Cr. LJ 118.

Cancellation of bail.—Provisions of section 437(1) or (2) regarding release of a person on bail are applicable to a person who has been released under section 167(2). The fact that before an order was passed under section 167(2) the bail petitions of the accused were dismissed on merits is not relevant for the purpose of taking action under section 437(5). Nor the ground that subsequent to the release of the accused a challan was filed by the police is a valid one. The court before directing the arrest of the accused and committing them to custody should consider it necessary to do so under section 437(5) by coming to the conclusion from the challan that there are sufficient grounds that the accused had committed a non-bailable offence and should be arrested and committed to custody. The other grounds such as tampering of the evidence or it is not in the interests of justice that the accused should be at large, may also be taken into account for arresting the accused. But it is necessary that the court should proceed on the basis that he has been deemed to have been released under section 437(1) and (2)—*Bashir v. State of Haryana* AIR 1978 SC 55.

After the completion of the investigation, if a charge-sheet is filed and the Magistrate considers it necessary to remand the accused, it would be open to him to cancel the bail under section 437(5) in view of the deeming provision contained in section 167(2)(a). In re. *N. Satyanarayan* 1975 2 AP LJ 133. After a person's release under section 167(2)(a), and after the filing of the challan, the prosecution has a right to make an application for cancellation of the bail of such an accused on the ground that on the merits of the case, he was not

entitled to be released on bail—*State of Haryana v. Rajinder Nath* 1976 78 Punj. LR 180.

Even if the bail is granted under section 167(2) for the reason that the charge-sheet has not been filed within 60 days, the bail can be cancelled only for the reasons for which the bail granted otherwise would be cancelled. The fact that the bail was earlier refused is not by itself a ground for cancelling the bail granted under section 167(2)—*Ram Murti v. State* 1976 Cr. LJ 211.

When the Sessions Judge or the High Court allows bail merely on a technical ground under section 167(2) but leaves it to the Magistrate to cancel and remand the accused to custody under section 209, the Magistrate can certainly cancel it while remanding the accused to custody. Even in such cases it will always be open to the accused to move the Court of Session or the High Court for granting fresh bail on merit—*Prem Charan v. State of Uttar Pradesh* 1976 Cr. LJ 1451.

Illustrative cases of applicability of the section

1. The accused cannot claim to be released on bail as of right under section 167(2)(a) during the pendency of the investigation which started before 1-4-1974, i.e., the date on which the 1973 Code came into force—*Natabar Parida, ibid.*
2. Section 167 applies only to those cases which are to be investigated under the new Code—*Baldev Singh v. State of Punjab* 1975 Cr. LJ 1662.
3. Section 167(2) applies to arrests made under section 151, with intention to prevent a person from committing cognizable offence provided that the two contingencies mentioned in section 167 arise—*State of Maharashtra v. D.B. Upadhyaya* 1976 Mah. LJ 550.

Non-applicability of the section

1. Section 167 does not apply when the accused person voluntarily surrenders to judicial custody—*State of Gujarat v. Patel Pramukhlal* 1975 Cr. LJ 324.
2. Section 167 does not apply to a case pending investigation at the time the new Code came into force—*State of Delhi v. Vipin Kumar* 1975 Cr. LJ 846, also see *Natabar Parida, ibid.* But the arrest and detention of the accused person though no doubt necessary for the purpose of investigation is not a part of investigation itself. The arrest is not part of the process of collection of evidence nor is detention—specific provision has been made in the Code in regard to these matters. The question of remand of an accused person pending investigation, even in cases where investigation has commenced prior to the commencement of the Code, must therefore be governed by the new Code after its commencement—*Koteswara Rao v. State of Kerala* 1975 Mad. LJ 366.

Arrests under Defence and Internal Security of India Rules.—In view of the Defence and Internal Security of India Act (section 37) and Rules framed thereunder (rule 184) in case of conflict, the provision of rule 184 of the Rules will prevail over section 167(2)(a) of the Code. The reason is that when an accused is released under section 167(2)(a), he is only released on bail and then rule 184

of the Defence and Internal Security of India Rules is attracted. As such, an accused person cannot be enlarged on bail merely on the ground that the period of sixty days has expired since the date he was taken in custody. He can, however, be enlarged on bail if the Court concerned is satisfied on hearing the parties and on the materials on record that there are reasonable grounds for believing that he is not guilty of contravention of the Rules against him—*Subha Narayan Jha v. State of Bihar* ILR 1976 Pat. 131.

In *Surinder Kumar v. State of Punjab* AIR 1977, P & H 245, it has been held that where the proviso (a) to section 167(2) comes into operation, the detention cannot be allowed to continue even after the period of sixty days in view of the provisions of rule 184 of the Defence and Internal Security of India Rules, 1971. There is no provision in the Defence and Internal Security of India Act or the Rules framed thereunder, enacting any procedure relating to investigation of cases concerning the contravention of the Rules. That being so, section 167 applies in the case of detention for contravention of Rules. Any remand to police or judicial custody by the Magistrate will be in the exercise of his powers under section 167.

Report of investigation by subordinate police officer.

168. When any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police station.

Release of accused when evidence deficient.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

Cases to be sent to Magistrate when evidence is sufficient.

170. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complaint (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and

prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainant and witnesses not to be required to accompany police officer and not to be subjected to restraint.

171. No complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Diary of proceedings in investigation.

172. (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court ; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act 1872 (1 of 1872), shall apply.

NOTES

Protection to witness.—Sections 168 to 172 incorporate the provisions contained in sections bearing the same respective numbers as in the old Code with one significant change only in section 171 and substitution of “Chief Judicial Magistrate” for “DM and SDM” in section 170(3).

According to old section 171, no complainant or witness could be required to accompany a police officer on his way to “the Court of the Magistrate”. In the opinion of the Joint Committee of Parliament, “the protection given to witnesses under this (section), should not be confined to those attending courts of

Magistrates only but also those attending any Court". Hence, the words "any Court" have been substituted for the words "the Court of the Magistrate", occurring in old section 171.

Report of police officer on completion of investigation.

173. (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

- (a) the names of the parties ;
- (b) the nature of the information ;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case ;
- (d) whether any offence appears to have been committed and, if so, by whom ;
- (e) whether the accused has been arrested ;
- (f) whether he has been released on his bond and, if so, whether with or without sureties ;
- (g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation ;
- (b) the statement recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed ; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

NOTES

Modifications in old provision.—This section corresponds to old section 173 with the following modifications :

1. In sub-section 2(i), additional information is required to be stated on the points mentioned in clauses (d) and (e).
2. Under the old provision, contained in sub-section (5) (proviso), the Magistrate was required to peruse the portion excluded from the report for not being furnished to the accused. This has been done away with.
3. So far as the furnishing of copies is concerned, the new law [sub-section (7)] leaves to the convenience of the police to furnish the copies of documents, etc., in contrast with the mandatory provision of old sub-section (4) under which the officer had to furnish those copies to the accused.
4. Section 173(2) is the provision under which the “charge-sheet” or the “challan” or “final report” would be sent by the police to the Magistrate concerned. Under the old provision, the question had arisen whether after submission of the report the police could submit a “supplementary” challan, more especially if he gets further information thereafter during investigation. In view of the practical importance of the question, sub-section (8) has been added to make the matter explicit that the police is not precluded from submitting a further report or reports regarding additional evidence obtained during the investigation.

Report necessary.—On reading the section it will be seen that the officer in charge of the police station has to forward a report of the investigation to the Magistrate in the prescribed form. Any report, therefore, sent before the investigation is completed will not be a report within the meaning of sub-section (2) and in such a case there is no question of the Magistrate taking cognizance of the offence and consequently the provisions of section 309 cannot be invoked—*T.V. Sarma v. Kamala Devi* ILR 1975 AP 589.

No further investigation after acceptance of the report.—Where the Magistrate had accepted the report of the police under section 173(2) and had proceeded with the trial of the case, it was held that he had no power to direct the police to make further investigation. Such a direction made at the time of the consideration of the charge was held unwarranted and without jurisdiction—*Jitendra Nath v. State* 1976 Cr. LJ 1290. In a case, however, where incomplete

charge-sheet was submitted in a hurry because the accused wanted to plead guilty, the court, acceding to prosecution's request for further time to complete the investigation and submit a final charge-sheet as the accused had resiled, *held* that there was nothing in the Code to prevent the court from granting such a request. Refusal of such a request would lead to injustice—*State of Maharashtra v. M.K. Bora* 1976-77 Mah. Cr. R. 213.

Police to enquire and report on suicide, etc.

174. (1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Power to summon persons.

175. (1) A police officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate's Court.

Inquiry by Magistrate into cause of death.

176. (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer ; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

Explanation : In this section, the expression “relative” means parents, children, brothers, sisters and spouse.

NOTES

Magistrate's obligation.—Sections 174 to 176 correspond to sections 174 to 176 of the old Code respectively. They do not make any change of substance in the old provisions. Sub-section (4) has, however, been added to section 176 to cast an obligation on the Magistrate to inform, as far as practicable, the relatives of the person whose dead body is the subject-matter of the inquest.

CHAPTER XIII

JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

Ordinary place of inquiry and trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Place of inquiry or trial.

178. (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

NOTES

Sections 177 and 178 correspond to sections 177 and 182 of the old Code respectively. No change has been made in the law as it was under the old Code in this behalf.

The word "ordinarily" used in section 177 has been interpreted by the Supreme Court in *Narumal v. State of Bombay* [AIR 1960 SC 1329] to mean the same thing as "except where otherwise provided in the Code itself or other law".

Offence triable where act is done or consequence ensues.

179. When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

NOTES

Verbal discrepancies in old provisions removed.—Sections 179 and 180 correspond to old sections bearing the same number. They had adopted different wordings to express the same idea. In the new sections, the verbal discrepancies have been removed and the wordings of both have been assimilated. The illustrations to old sections have also been omitted.

Place of trial in case of certain offences.

181. (1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.

(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence

was received or retained, or was required to be returned or accounted for, by the accused person.

(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

NOTES

Modifications in old provision re. venue of trial.—This section is similar to section 181 of the old Code. The following improvements have however been made therein :

1. In sub-section (1), the place of commission of the offence has been expressly mentioned as an alternative venue [“the offence was committed”] for the sake of consistency with other sub-sections in the section.
2. Sub-section (3) has been framed by splitting old sub-section (3) : one dealing with the offences of theft, extortion and robbery, including their aggravated forms and the other dealing with the offences which include the possession of property. The first category is now provided for in sub-section (3) and the other in sub-section (4).
3. Sub-section (4) [old sub-section (3)] has been modified in view of the conflicting decisions whether offences of criminal misappropriation of property and criminal breach of trust could be inquired into or tried by a court within whose jurisdiction the accused was bound, by law or contract, to render accounts or to return the entrusted property but failed to discharge the obligation—See *Gunananda Dhone v. Santy Prakash Nandy* AIR 1925 Cal. 615 ; *Jivandas Savchand* AIR 1930, Bom. 490 and *Mohru Lal v. Emp.* AIR 1936 All. 193.

As observed by the Law Commission, “the additional alternative venue” will apply also to cases where there is evidence of the offence other than the failure to return or account for the property.

Offences committed by letters, etc.

182. (1) Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received ; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage [, or the wife by the first marriage has taken up permanent residence after the commission of the offence].

NOTES

Venue of trial for offences of cheating by post and bigamy.—The old Code did not make any specific provisions regarding venue for the offence of cheating by post,

etc., unlike provision for other offences in the preceding section. Controversial questions had therefore arisen in this behalf. The High Courts expressed different views in applying the general principles contained in old sections 177, 179 and 182 (now sections 177, 178 and 179). The Supreme Court, in *Mobarik Ali Ahmed v. State of Bombay* AIR 1957 SC 857 decided the question entirely under section 177 of the Code. A (new) special provision has, therefore, been made in sub-section (1).

Similarly sub-section (2) provides, following the recommendation of the Law Commission in the matter, that for offences of bigamy the venue could also be the place where the offender last resided with his or her spouse by the first marriage.

Amendment.—Now as a result of the amendment in sub-section (2) made by the Amendment Act, 1978, a woman is enabled to make a complaint relating to an offence of bigamy at the place of permanent residence after the commission of the offence instead of at the place where she last resided with the husband.

Offence committed on journey or voyage.

183. When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

NOTES

Venue of trial for offence committed in the course of voyage, etc.—The old section 183 to which the present section corresponds has been redrafted so as to remove an inconsistency between the wordings of the opening part and the concluding part of the old section. Although the inconsistency has not come under judicial attention or comment, the Law Commission recommending the redraft of the section observed :

“We notice an inconsistency between the wording of the opening part and that of the concluding part which appears to have escaped judicial attention or comment. The section deals with “an offence committed whilst *the offender* is in the course of performing a journey or voyage”, but prescribes that the venue may be laid in any local areas through or into which either “the offender or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of *that journey or voyage*”. The last four words could only mean the journey or voyage which the *offender* was in the course of performing when he committed the offence. If strictly interpreted in this manner, the section would seem to be of little or no practical application to the common type of cases which it is obviously intended to cover.”

For instance in a case where the wagons which were tampered with passed through Nagpur during their ordinary course of journey, it was held that section 183 gave jurisdiction to the Nagpur Court to lay the offence even though the offence might have been committed at a place, which could be ascertained before the train reached Nagpur—*State of Maharashtra v. Shiocharan Bhanji*, 1976 Mah. LJ 73.

Place of trial for offences triable together.

184. Where—

- (a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221, or
- (b) the offence or offences committed by several persons are such that they may be charged with and tried together by virtue of the provisions of section 223,

the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

NOTES

Venue in relation to joinder of charges and joint trials.—Old section 184 which had made special provision for offences against Railways, etc., to be tried in Presidency towns has been omitted as unnecessary.

Present section 184 is a new one dealing with the problem of venue in relation to joinder of charges and joint trials. When, under the Code, an accused person is charged with and tried at one trial for all or more offences, it is but reasonable to assume that the venue for the trial can be laid in any local jurisdiction within which any of those offences may be inquired into or tried. Similarly, when two or more persons are charged with and tried together for different offences, the prosecution has a similar choice of venue for the trial.

This question was, however, frequently raised in the courts in regard to a criminal conspiracy. The Supreme Court in *Purushottam Dass Dalmia v. State of West Bengal* AIR 1961 SC 1589 held that the court having jurisdiction to try the offence of criminal conspiracy can try any of those offences, even if those offences were committed outside the jurisdiction of the Court. In *L.N. Mukherjee v. State* [AIR 1961 SC 1601], the Supreme Court also held that the Court having jurisdiction to try the offences committed in pursuance of the conspiracy can try the main offence of conspiracy, even if it was committed outside the jurisdiction of the Court.

An express provision has, however, been made in the new section 184 to the effect that where offences committed by any person are such that he may be charged with and tried in one trial or the offences committed by several persons are such that they may be charged and tried together, the offences may be inquired into or tried by any court competent to try any of the offences. Thus the provision gives effect to a view accepted by the Supreme Court.

Power to order cases to be tried in different sessions divisions.

185. Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division :

Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Code or any other law for the time being in force.

NOTES

Section confers extraordinary power but is rarely used.—This section corresponds to section 178 of the old Code. Only the proviso has been redrafted in view of the changed circumstances as a result of the coming into force of the Constitution.

It may be stated in passing that this section gives extraordinary power to the State Government and the provision has been in the Code since the beginning and yet the occasions for its use have been rare. The Law Commission observed :

“The power conferred by section 178 is an extraordinary power intended to be used only when some consideration of public interest (e.g., maintenance of public order during the trial of a sensational case) justifies the holding of a sessions trial in a different sessions division. We have, after due consideration, come to the conclusion that, despite its infrequent use and seemingly arbitrary character, the provision should remain in the Code. Although the section is expressed to override only section 177, it is obviously intended to override also the other venue provisions”.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

186. Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided—

- (a) if the Courts are subordinate to the same High Court, by that High Court ;
- (b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced,

and thereupon all other proceedings in respect of that offence shall be discontinued.

NOTES

This section is materially the same as section 185 of the old Code. The old provisions have, however, been revised and consolidated and made clearer and simpler by the new section.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

187. (1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 177 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under some law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or if such offence is not punishable with death or

imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond with or without sureties for his appearance before the Magistrate having such jurisdiction.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

NOTES

Restriction on power to grant bail removed.—The provisions of this section are almost the same as contained in section 186 of the old Code. Under the present section all Magistrates of the first class have been empowered to issue a process against any person within his local jurisdiction who has committed an offence outside. Under the old Code only DM and SDM were authorised to issue processes in such cases.

Further under the old provision, the Magistrate could have allowed bail only if the offence was bailable. The Joint Committee of Parliament observed :

“The Committee considers that this restriction is not necessary and that the power to grant bail should be extended to cases involving any offence other than offences punishable with death or imprisonment for life. This is intended to give to the arrested person the benefit of getting bail at or near the place where he is arrested instead of his being compelled to go to a far-off place in custody for getting bail.”

Incidentally, in view of the modified section 187, the old section bearing the same number which dealt with the procedure where warrant was issued by the subordinate Magistrates, has been omitted.

Offence committed outside India.

188. When an offence is committed outside India—

- (a) by a citizen of India, whether on the high seas or elsewhere ;
- (b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found :

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

NOTES

Extra-territorial application of Code.—This section, which corresponds to section 188 of the old Code, furnishes the necessary procedural counterpart to those substantive penal laws which have extra-territorial application. The following improvements have been made in the old provision :

1. Clause (a) of the old section had used the words "offence committed in any place". A doubt could arise whether the provision applied to offence on the high seas, or while on board a foreign vessel, or in air space over foreign territory or the high seas while on board a foreign aircraft. The amended clause (a) makes it clear that it does apply and now uses the expression "whether on the high seas, or elsewhere".
2. Clause (b) of the old section had used the words "on any ship...wherever it may be". It was pointed out by the Law Commission that the expression "wherever it may be" was not precise inasmuch as the offence was extra-territorial only when the ship, etc., was outside India including its territorial waters. Hence, that expression has been omitted in new clause (b).
3. The first proviso to old section 188 which spoke of political agent's certificate, etc., has been simplified and recast in view of the political changes after the Independence. As a result, and appropriately, the new proviso requires the previous sanction of the Central Government only rather than that of the State Government and from practical point of view as well as to avoid undue delay, does away with the necessity of certificate of the Indian envoy in the foreign country. The whole matter has been left to the Central Government. The proviso has also been drafted to start with the *non obstante* clause to terminate controversy as to when the certificate or sanction should be obtained.
4. Finally, the second proviso to old section which barred taking out extradition proceedings against the accused has been omitted on the ground that section 403 of the old Code applied and the provision could perhaps be made in the Extradition Act, 1962, rather than in the (new) Code.

Receipt of evidence relating to offences committed outside India.

189. When any offence alleged to have been committed in a territory outside India is being inquired into or tried under the provisions of section 188, the Central Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before a judicial officer in or for that territory or before a diplomatic or consular representative of India in or for that territory shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

NOTES

Minor changes in old provision.—This section is substantially the same as section 189 of the old Code. Only two minor changes have been effected to bring the section in line with newly amended section 188. The changes are :

- a. sanction of the Central Government has been substituted for State Government's sanction ;
- b. the expression "diplomatic or consular representative" has been substituted for "political agent" in view of the definition of the latter expression in the General Clauses Act.

CHAPTER XIV

CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS

Cognizance of offences by Magistrates.

190. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

- (a) upon receiving a complaint of facts which constitute such offence ;
- (b) upon a police report of such facts ;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

NOTES

Modifications made in old section.—This section corresponds to section bearing the same number in the old Code. That section had opened with the words “Except as hereinafter provided”. But since the provisions contained in the section were not in a strict sense “exceptions” but only additional requirements for initiating proceedings, the more appropriate words, “Subject to the provisions of this Chapter” have now been used to open the new section. Besides this, the new section entrusts the power thereunder to all Magistrates of the first class leaving Magistrates of the second class to be specially empowered by the State Government or by the Chief Judicial Magistrate [see sub-section (2)] in contrast with the old provision, which authorised DM, SDM and Presidency Magistrate to take cognizance of an offence and left other Magistrates (including first class ones) to be specially empowered.

In clause (b) of sub-section (1), the expression used is “police report” for the expression “report by a police officer” in the old section 190(1)(b) because the former expression has now been defined [vide section 2(r)] and will bring out clearly the cases intended by the section.

Clause (c) [old] had mentioned a case where the Magistrate could take cognizance of an offence *inter alia* upon his “knowledge or suspicion”. The Law Commission felt that “it was not wise to place such a responsibility on a judicial officer”. Hence, the word “suspicion” has not been used in the present clause (c).

Taking cognizance—meaning of.—The question as to what is meant by taking cognizance is no longer *res integra* as it has been decided by several decisions of the Supreme Court. As far back as 1951, the Supreme Court in the case of *R.R. Chari v. State of Uttar Pradesh* AIR 1951 SC 207 observed as follows :

“Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence.”

The court endorsed the following observations of Justice Das Gupta in the case of *Superintendent & Remembrancer of Legal Affairs v. Abani Kumar Banerjee* AIR 1950 Cal. 437 :

“... before it can be said that any Magistrate has taken cognizance of any offence under section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter—proceeding under section 200 and thereafter sending it for inquiry and report under section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind e.g., ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.”

See also *Narayandas Bhagwandas Madhavdas v. State of West Bengal* AIR 1959 SC 1118 ; *Gopaldas Sindhi v. State of Assam* AIR 1961 SC 986 and *Jamuna Singh v. Phadai Sah* AIR 1964 SC 1541.

In *D. Lakshminarayana v. V. Narayana* AIR 1976 SC 1672, the Supreme Court has held that the expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of section 190 and the caption of Chapter XIV under which sections 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purpose of proceeding under section 200 and the succeeding sections in Chapter XV, he is said to have taken cognizance of the offence within the meaning of section 190(1)(a).

If, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under section 156(3), he cannot be said to have taken cognizance of any offence. See also *Tula Ram v. Kishore Singh* AIR 1977 SC 2401.

Sections 156 and 190 compared —Section 156(3) appears in Chapter XII which deals with information to the police and the powers of the police to investigate a crime. This section is, therefore, placed in a Chapter different from Chapter XIV which deals with initiation of proceedings against an accused person. It is, therefore, clear that sections 190 and 156(3) are mutually exclusive and work in totally different spheres. In other words, the position is that even if a Magistrate receives a complaint under section 190, he can act under section 156(3) provided that he does not take cognizance. The position, therefore, is that while Chapter XIV deals with post-cognizance stage, Chapter XII deals with pre-cognizance stage so far as the Magistrate is concerned, that is to say, once a Magistrate starts acting under section 190 and the provisions following he cannot resort to section 156(3).

Where a Magistrate orders investigation by the police before taking cognizance under section 156(3) and receives the final report from the police he has power to issue notice to the complainant, record his statement and the statements of other witnesses and issue process under section 204. The legal propositions that emerge in this regard are :

1. A Magistrate can order investigation under section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter XIV he is not entitled in law to order any investigation under section 156(3) ; though in cases not falling within the proviso to section 202 he can order an investigation by the police which would be in the nature of an inquiry as contemplated by section 202.
2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives :
 - a. he can pursue the complaint and if satisfied that there are sufficient grounds for proceeding, he can straightway issue process to the accused but before he does so he must comply with the requirements of section 200 and record the evidence of the complainant or his witness ; or
 - b. the Magistrate can postpone the issue of process and direct an enquiry by himself ; or
 - c. the Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.
3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered, is not satisfied that there are sufficient grounds for proceeding, he can dismiss the complaint.
4. Where a Magistrate orders investigation by the police before taking cognizance under section 156(3) and receives the report, thereupon he can act on the report and discharge the accused or straightway issue process against the accused or apply his mind to the complaint filed before him and take action under section 190—*Tula Ram v. Kishore Singh* AIR 1977 SC 240 ; See also *D. Lakshminarayana v. V. Narayana* AIR 1976 SC 1672.

'Taking cognizance' illustrated.—

1. The officer-in-charge of the police station has power to submit the charge-sheet even after he had submitted the final report. It is Magistrate's discretion to treat the charge-sheet as information. Once he has treated it as information, he can take cognizance of the offence on it. The Magistrate, even if he has accepted the final report, is not debarred from taking cognizance on a subsequent report provided that it mentioned facts constituting the offence—*Krishna Lal Gulaji v. State* 1976 Cr. LJ 1825.
2. The Magistrate can take cognizance of an offence on his own knowledge. The knowledge may be personal knowledge or knowledge derived from documents. Therefore, where on the FIR the investigating officer submitted a final report under section 169, it is competent for the Magistrate to take cognizance of the offence on his own knowledge derived from police papers and final report—*Ganga Prasad v. State* 1975 Cr. LJ 1565.
3. The Magistrate does not agree with the opinion of the police that no case was made out for sending the accused for trial. Hence, he could take cognizance against him under section 190(1)(c)—*Garibdas v. State of Punjab* [1976] 78 Punj. LR 71.
4. There is no bar in the Code to take cognizance of an offence of which cognizance has already been taken on the basis of a charge-sheet submitted by

police and the case has been committed to the Court of Session. In such a case, however, the question will be one of propriety that both the cases should be tried by one court and not a question of competence—*Mehar Singh v. Dula Singh* 1977 Cr. LJ Note No. 6.

Transfer on application of the accused.

191. When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

NOTES

Making over the case to another Magistrate.—Under the old section of the same number, it was possible for the Magistrate, who took cognizance of a case on his own knowledge or information to go on, in spite of the accused's objection, with the inquiry in order to commit him to the Court of Session. The present section has, however, been modified so that if such cognizance is taken by a Magistrate hearing the case, the case must at once be made over to another Magistrate competent to inquire into or try it without requiring to go to Sessions Court.

Making over of cases to Magistrates.

192. (1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

NOTES

CJM's power to transfer a case to a subordinate magistrate.—This section, which corresponds to section 192 of the old Code, has two sub-sections dealing with two different matters.

Sub-section (1) empowers the CJM to transfer a case of which he has taken cognizance to a competent subordinate Magistrate. This is a necessary power for the proper arrangement of criminal work and the object is that senior Magistrates may find it convenient to look at most of the cases in the first instance but after taking cognizance send them for disposal to their subordinates. On this point, two improvements have been made in the old sub-section (1)—

1. CJM has been substituted for Chief Presidency Magistrate, DM and SDM.

2. By using the expression "after taking cognizance of an offence" for the expression "any case, of which he has taken cognizance" in the old sub-section (1), it has been made clear that the transfer has nothing to do with the transfer of a case other than a case involving an offence [e.g., proceedings under section 107].

Sub-section (2) enables the CJM to clothe a first class Magistrate with powers like his own under sub-section (1).

Cognizance of offences by Courts of Session.

193. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

Additional and Assistant Sessions Judges to try cases made over to them.

194. An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try.

NOTES

Sections 193 and 194 correspond to sub-section (1) and sub-section (2) of section 193 of the old Code, respectively.

Committal whether of accused or case under section 193.—Section 193 uses the words 'unless the case'. Old section 193(1) used the expression 'unless the accused'. It was, therefore, contended that under the new section, what was being committed was case and not the accused and so under section 319(1) the Sessions Judge had ample power during trial to take cognizance of an offence against such an accused against whom there appeared to be sufficient evidence without a committal order. *Held*, there cannot be a committal of the case without the accused being there. The use of words 'unless the case' instead of the words 'unless the accused' is for conforming to section 209 since the Magistrate now has to commit the entire case—*P.C. Lingaiah v. State* 1977 Cr. LJ 415.

Sessions Judge to distribute work under overall control of High Court.—Old section 193(2) had provided that Additional and Asstt. Sessions Judges could try such cases only as the State Government might direct them to try or the Sessions Judge of the division might make over to them for trial. It appeared unnecessary to bring the State Government into what was mainly a matter of distribution of work among the courts in districts a matter of day to day control of the work of the courts—which, as pointed out by the Supreme Court in *Ranga Muhammad's Case* [AIR 1967 SC 903] must rest with the High Court. Accordingly, section 194 [old section 193(2)] has been drafted so that the distribution of cases is mainly attended to by the Sessions Judges and they should continue to do so under the overall control of the High Court.

Incidentally, section 194 of the old Code which provided for cognizance of offences by High Court and a special procedure of initiation of case by Advocate-General has been omitted from the new Code.

Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

195. (1) No Court shall take cognizance—

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of or attempt to commit, such offence, or
(iii) of any criminal conspiracy to commit such offence,
except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate ;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court ; and upon its receipt by the Court, no further proceedings shall be taken on the complaint :

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term ‘Court’ means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate :

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ;

- (b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

NOTES

Ambit of section.—This section deals with prosecution for three different groups of offences, viz., contempt of lawful authority of public servants, certain offences against public justice and certain offences relating to documents given in evidence. The second and third groups are connected in that, both of them affect the administration of justice. The present section substantially corresponds to old section 195. It has been rearranged from the drafting point of view and some modifications have also been made therein :

Nature of public servant's subordination.—The word “subordinate” in sub-section (1)(a) has been qualified by the word “administratively” to clarify the nature of subordination of the public servant.

Offences against public justice—Law Commission's observations.—Under clauses (i) and (ii) of section 195(1)(b) the complaint of the civil, revenue or criminal court concerned is necessary for any criminal court to take cognizance of certain offences against public justice or certain offences relating to documents given in evidence. As observed in a Madras case [*Ramaswamy v. Mudaliar* AIR 1938 Mad. 173, 174] “this salutary rule of law is founded on common sense. The dignity and prestige of Courts of law must be upheld by their presiding officers, and it would never do to leave it to parties aggrieved to achieve in one prosecution gratification of personal revenge and vindication of a Court's honour and prestige. To allow this would be to sacrifice deliberately the dispassionate and impartial claim of tribunals and to allow a Court's prestige to be the sport of personal passions.”

Old provision.—The present sub-section combines the provisions contained in clauses (b) and (c) of section 195(1) of the old Code. Clause (b) applied when any of the specific offence was committed in, or in relation to, any proceedings in any Court and clause (c) applied when the offence of forgery, etc., was alleged to have been committed “by a party to any proceeding” in respect of document produced or given in evidence in such proceeding. In connection with this, the following important points were considered by the Law Commission :

1. *Protection to witnesses.*—An important point that has to be considered here is whether the restriction of the application of the section to a party to the proceeding should be retained. The purpose of the section is to bar private prosecutions where the course of justice is sought to be perverted, leaving it to the Court itself to uphold its dignity and prestige. On principle, there is no reason why the safeguard in clause (c) should not apply to offences committed by witnesses also. Witnesses need as much protection against vexatious prosecutions as parties and the Court should have as much control over the acts of witnesses that enter as a component of a judicial proceeding, as over the acts of parties. If, therefore, the provisions of clause (c) are extended to witnesses, the extension would be in conformity with the broad principle which forms the basis of section 195.
2. *Abettors of the offence.*—Whether persons who abetted the offence but were not parties to the proceedings came within the purview of (old)

clause (c). Many High Courts held the view that in such a case a complaint by the court was not necessary for prosecuting them. This led to somewhat incongruous situation that while the main offender could not be prosecuted without sanction, any minor aiders, or abettors or accessories of his could be so prosecuted.

3. *Prosecution of others not a party to proceeding.*—Different views had also been taken by the High Courts on the question: where an offence specified in (old) clause (c) was alleged to have been committed by several persons of whom only one was a party to the court proceedings, (a) could others be prosecuted without a complaint from the court?; (b) could the court make a complaint against those persons who were not parties?

The Law Commission, therefore, taking the overall view of the matter and keeping in mind the object of the section recommended that the scope of the clause should not be restricted to offences committed by parties to court proceedings. It should apply to an offence and criminal conspiracies, etc., in respect of documents, etc. Hence the words "by a party to any proceeding" have been omitted from sub-section (1)(b)(ii).

Proviso to sub-section (2).—The proviso has been added to make it clear that the power to withdraw the complaint conferred on the superior authority should not be exercised if the trial has concluded.

Court—meaning of S.C.'s observations.—This explains what the term "Court" means in clause (b) of sub-section (1). The old *Explanation* was as follows:

"Court" includes Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act."

The word 'includes' in the above-quoted old *Explanation* was substituted by the Amending Act of 1923 for the word 'means' used in the original Code. The Supreme Court in *Virender Kumar Satyawadi v. The State of Punjab* [1955] 2 SCR 1013 observed:

"It is familiar feature of modern legislation to set up bodies and tribunals and to entrust to them work of a judicial character but they are not courts in the accepted sense of that term. It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court."

Court—Meaning of—Law Commission's observations.—"In any concrete case this question is bound to raise difficult and complex issues. Consequently we have a long series of cases over the years deciding what tribunals and officers acting in a judicial capacity should be regarded as courts and what should not be so regarded. The substitution of "includes" for "means" in the definition has, if anything, added to the difficulties of the problem. We

consider that for the purpose of clauses (b) and (c), "Court" should *mean* a civil court or a revenue court or a criminal court properly so called, but where a tribunal created by an Act has all or practically all the attributes of a court, it might be regarded as a court only if it is declared by that Act to be a court for the purposes of this section. This would make the position clear to all concerned, and particularly to criminal courts when required to take cognizance of offences falling within the scope of clause (c). They would then be left with the comparatively easy question whether the judicial body or authority before which the document was produced or given in evidence was a civil court or a revenue court or a criminal court."

Registrar's Court excluded.—As regards the exclusion of the Courts of Registrars and Sub-registrars, the Law Commission held the view that they could not be regarded as civil courts for the purpose of section 195 and their specific exclusion was therefore unnecessary.

In view of what has been stated above, sub-section (3) *now* omits a reference to Registrars and Sub-registrars and includes an omnibus expression "Tribunal" with the qualifying attribute that it should have been declared to be a court for the purposes of section 195 by the relevant statute.

Income-tax Officer—Whether Court.—An Income-tax Officer can be said to be a Court only when it is a tribunal constituted by an Act and if that Act declares the said Tribunal to be a Court for the purpose of this section. There is no Act which has done so. The Income-tax Officer is therefore not a Court within section 195(1)(b)—*Balkrishna Managing Director v. ITO* 1976 Mad. LJ (Cr.) 531 ; See also *Friends Union Oil Mills v. ITO* [1975] KLJ 596.

Prosecution for offences against the State and for criminal conspiracy to commit such offence.

196. (1) No Court shall take cognizance of—

- (a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or
- (b) a criminal conspiracy to commit such offence, or
- (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860),

except with the previous sanction of the Central Government or of the State Government.

[(1A) No Court shall take cognizance of—

- (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or
- (b) a criminal conspiracy to commit such offence,

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit [an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards,

unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.

NOTES

This section combines the provisions contained in sections 196, 196A and 196B of the old Code.

Object of the section.—The object of this section which provides an exception to the general rule that a criminal prosecution can be initiated at the instance of any person, is to prevent unauthorised persons from intruding in matters of State by instituting prosecutions, and to secure that such prosecutions shall only be instituted under the authority of Government—*Bal Gangadhar Tilak* 22 ILR Bom. 112.

Exclusion of election offences.—The old section 196 excluded from its purview offence under section 127 of IPC (receiving property taken by war, etc.) although all other offences in Chapter VI of IPC were included. This has now been corrected in the new section. Similarly, the old section included election offences [Chapter XA of IPC except section 171F]. The inclusion in section 196 of election offences was originally done in order to allay the apprehensions of several local Governments that the new penal provisions were likely to be abused, specially in rural areas, for putting one's personal enemies into trouble by foisting false cases on them after an election. It was thought that this would give some discretion to the Government to determine whether criminal proceedings were warranted in the circumstances of each case so that vexatious proceedings instituted solely on the basis of political animosity by private individuals could be avoided. This secondary object was certainly achieved but it is doubtful whether the penal provisions ostentatiously put in the IPC, but effectively blunted by section 196 of the Code of Criminal Procedure, helped to maintain the purity of elections to any appreciable extent. This difficulty was realised in some provinces in regard to the offence of personation punishable under section 171F of the IPC. Even a person blatantly committing this offence at the polling booth could not be arrested or otherwise proceeded against on the spot since the offence was non-cognizable and the complaint of an empowered officer was required for prosecuting the offender in court. The Code of Criminal Procedure was locally amended by four Provinces excluding this offence from the scope of section 196 and making it cognizable. This lead was followed up in the Representation of the People Act, 1951, and the amendment became applicable throughout India. The Law Commission, therefore, recommended :

“The experience of the last 20 years in the field of countrywide democratic elections shows that unless these impediments to prosecution are removed, the mere fact that bribery, undue influence, character assassination, etc.,

are punishable on conviction by a criminal court, makes little difference and these corrupt practices are indulged in with impunity. The number of complaints lodged by the Government or empowered officers in regard to election offences (apart from personation) is naturally very small. Under the party system of Government prevalent throughout the country it will, no doubt be embarrassing for the State Government to decide in the first instance whether a complaint ought to be lodged in a particular case. Whichever way it decides this question it is most likely that political motives and prejudices will be attributed to it. It is possible that if the bar contained in section 196 of the Code is removed there will be a spate of private complaints, including quite a few vexatious ones for the sake of harassment, but we feel that this possibility must be faced in the interest of free and fair elections. We recommend that all election offences should be excluded from the section."

The other changes in sub-section (1) are :

1. *Offence of keeping lottery office.*—Section 294A of IPC (offence of keeping lottery office) has been left out of the section so that no private complaints in respect of that offence are shut out.

2. *Offence against national integration.*—Section 153B of IPC (offence against national integration) has been included as it is a new offence created by Act 37 of 1972.

3. *Offences against State.*—Prosecution for (a) offences against the State under sections 121 to 130 of the Indian Penal Code ; (b) offences under sections 153A, 295A and 505 of the Indian Penal Code ; and (c) offence of abetment or an offence committed outside India, which could be initiated by complaint of a State Government or under its authority or of an officer empowered by it, may, under the new provisions, be initiated by previous sanction of Central Government or the State Government, so that a simple provision of this type would avoid the time-consuming controversies that are frequently raised in courts as to whether the officer has been duly empowered by the State Government, whether the authority to lodge the particular complaint had duly emanated from that officer or from the Government and so on. Similarly, since these offences are cognizable, it would be incongruous to require a complaint in such cases. Hence the requirement has been altered to one of previous sanction instead of complaint.

Amendment Act, 1980.—A new sub-section (1A) has been inserted by the Amendment Act, 1980 with effect from 23-9-1980. The new sub-section, besides empowering the Central Government and the State Governments, also empowers the District Magistrates to accord sanction for prosecution for offences falling under section 153B and sub-sections (2) and (3) of section 505 of the Indian Penal Code.

Criminal conspiracies.—Sub-section (2) embodies the provisions of section 196A of the old Code. The old section classified criminal conspiracies into two groups and made a fine distinction as to the manner of initiating proceedings in respect of each. This refinement has since been done away with. The section has, therefore, been simplified and revised without any change in the core of the provision as interpreted by the Supreme Court in *Bhanwar Singh v. State of Rajasthan* AIR 1961 SC 709.

Amendment Act, 1978.—Sub-section (2) originally restricted the power of the Court to take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code, other than a criminal conspiracy

to commit a cognizable offence which is punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards unless the State Government or the District Magistrate has consented to the initiation of proceedings. By the Amendment Act, 1978, the distinction between cognizable and non-cognizable offences for the purposes of this section has been removed.

Prosecution of Judges and public servants.

197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction—

- (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government ;
- (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

NOTES

Protection to important categories of public servants.—This section like old section 197 affords protection from false, vexatious or *mala fide* prosecutions to important categories of public servants performing onerous and responsible functions fearlessly. The three classes of public servants covered by old section 197 were a judge, a magistrate and a public servant who was not removable from his office except by or with the previous sanction of the Government concerned. The protection extended only when such public servant was acting or discharging his duty and consisted in requiring previous sanction of the concerned Government for his prosecution.

Protection to retired public servants.—Section 197 (old) applied to a public servant of the specified category only when he was holding the office. It did not apply to a person who had retired, resigned or otherwise left the service. As interpreted by the Supreme Court in *Keshavlal v. The State* AIR

1961 SC 1395 and in *In re S.A. Venkataraman* [1958] SCR 1037, the section applied to a public servant not only when he was as such when the offence was alleged to have been committed but also when he was "accused" of the offence. The Law Commission therefore recommended :

"It appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by section 197 is in the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant."

Accordingly, the section has been framed in the revised form so to as cover (a) retired Judge, etc. [the word used is "was"] ; and (b) members of the Armed Forces of the State or Union.

Incidentally, the requirement of sanction for prosecution of Rulers as provided in section 197A of the old Code has been done away with, the privileges of Rulers having been abolished by the Constitution (Twenty-sixth Amendment).

Prosecution for offences against marriage.

198. (1) No Court shall take cognizance of an offence punishable under Chapter XX of the India Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence :

Provided that—

- (a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf ;
- (b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf ;
- (c) where the person aggrieved by an offence punishable under [section 494 or section 495] of the Indian Penal Code (45 of 1860), is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister [, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption].

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code :

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding Officer, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(5) Any document purporting to be such an authorisation and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code (45 of 1860), where such offence consists of sexual intercourse by a man with his own wife, the wife being under fifteen years of age, if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

Prosecution for defamation.

199. (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence :

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

- (a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government ;
- (b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State ;
- (c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

NOTES

These sections correspond to and consolidate the provisions contained in sections 198, 198A, 198B, 199, 199A and 199B of the old Code. They deal with prosecutions of certain categories of offences. The changes made in the old provisions are briefly enumerated below :—

1. *Procedural restriction removed.*—The procedural restriction on offence under section 491 of IPC (breach of contract) which was contained in the old provision has been removed by omitting the reference to that section from revised section 199.
2. *Offences relating to marriages.*—Cognizance of all offences relating to marriage and matters connected therewith have been dealt with in a single section 198 (new) *instead of* in three sections which was the case before. While doing so, it has been made clear that the section applies to abetments and attempts to commit offences under Chapter XX of IPC also [*see* section 198(7)]. It has also been made clear that a person who is authorised by the husband who is in the army need not again obtain leave of the court for making a complaint [*see* section 198(1)(b)].
3. *Defamation.*—Offences under Chapter XXI of IPC have been dealt with in a separate section 199 *minus* matters regarding defamation of persons under the age of eighteen years or lunatics [as contained in old section 199A].
4. *Defamation of high dignitaries, etc.*—As regards defamation of high dignitaries and public servants :
 - a. It has been made clear that the section applied only when the dignitary defamed holds the office at the time of the defamation. The State should not have power to initiate prosecution under this section for defamation of ex-ministers, etc. [*see* words used : “at the time of such commission” in sub-section (2) of section 199].
 - b. It has also been provided that the Public Prosecutor should obtain the previous sanction of the Government concerned instead of particular secretaries as was the case under the old section.

- c. In view of the abolition of jury trial, the Court of Sessions is empowered to take cognizance of the case directly [see section 199(2)].
 - d. Sub-section (6) of section 198 brings out clearly the idea contained in sub-sections (13) and (14) of section 198B of the old Code.
 - e. Provisions regarding payment of compensation as contained in old sub-sections (6) to (11) of section 198B have been omitted as new section 250 already deals with the subject generally.
5. *Amendment—Complaint of bigamy by aggrieved woman's relations.*—Paragraph (c) of proviso to sub-section (1) of section 198 has been amended by the Amendment Act, 1978 to provide that a complaint of an offence of bigamy may be filed also by any other person related to the wife by blood, marriage or adoption, after obtaining leave of court. This amendment is intended to afford the much needed help to the aggrieved woman in such cases. This also incidentally implements a recommendation of the Committee on Status of Women.

CHAPTER XV

COMPLAINTS TO MAGISTRATES

Examination of complainant.

200. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint ; or
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192 :

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

NOTES

Old provision re. examination of complaint "at once" removed.—The corresponding section 200 of the old Code required that the Magistrate taking cognizance of an offence on complaint must examine it "at once" in order to emphasise that such examination was the first step to be taken in every case. The expression "at once" has not been retained in the present section in order to avoid "a futile controversy about the effect of some time interval between the receiving of a complaint and the complainant's examination". The mandate of law has been considered sufficiently clear without the expression "at once".

Administration of oath.—Clause (b) of the proviso to old section made a distinction between Presidency Magistrates and other competent Magistrates inasmuch as a Presidency Magistrate was given the discretion to administer or not to administer oath to the complainant and further, in the case of a written

complaint, he was not required to make a full record of the examination as the other Magistrates were required to do. This distinction has been done away with by omitting clause (b) of the proviso.

Procedure by Magistrate not competent to take cognizance of the case.

201. If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,—

- (a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect ;
- (b) if the complaint is not in writing, direct the complainant to the proper Court.

NOTES

The present section is only a formal redraft of the corresponding old section 201 without any change in substance.

Postponement of issue of process.

202. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding :

Provided that no such direction for investigation shall be made,—

- (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session ; or
- (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath :

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

NOTES

This section corresponds to section 202 of the old Code. The changes made in the law are elaborated below :

Recording of reasons not necessary.—The new section does away with the provision requiring a Magistrate to record his reasons in case he postpones the summoning of the accused and orders an inquiry or investigation into the complaint.

Object of inquiry or investigation.—The old section provided that the further inquiry or investigation was intended for the purpose of “ascertaining the truth or falsehood of the complaint”. This was considered to be inappropriate, as the truth or falsehood of the complaint could not be determined at that stage; nor was it possible for Magistrate to say that the complaint before him was true when he decided to summon the accused. The real purpose is to ascertain whether grounds exist for “proceeding further” and therefore suitable verbal changes have been made in the section.

Inquiry by subordinate Magistrate not desirable.—The old section provided that when a Magistrate decided to postpone the issue of process he could make an inquiry into the case himself or *have an inquiry made by a subordinate magistrate*. This power of delegating a part of the task has been done away with because making of an inquiry which involves hearing of evidence, by a subordinate magistrate, when the case has finally to be decided by the Magistrate is not considered proper. Such a power would also lead to avoidable delays.

Complaints of offences triable exclusively by the Court of Session.—Certain changes in the procedure to be followed in an inquiry into complaints, where the offence complained of is one triable exclusively by the Court of Session, have been made. Now the Magistrate who takes cognizance of such offence on complaint has himself to make an inquiry into the complaint, and call upon the complainant to produce all *his* witnesses and examine them on oath. Further, in such cases the Magistrate has not to direct an *investigation* by a police officer or other person.

Distinction between investigation under section 156(3) and that under section 202.—The distinction between a police investigation ordered under section 156(3) and the one directed under section 202 has been clearly brought out by the Supreme Court as follows in *D. Lakshminarayana v. V. Narayana* AIR 1976 SC 1672 :

“The position under the Code of 1898 with regard to the powers of a Magistrate having jurisdiction to send a complaint disclosing a cognizable offence—whether or not triable exclusively by the Court of Session—to the police for investigation under section 156(3), remains unchanged under the Code of 1973. The distinction between a police investigation ordered under section 156(3) and the one directed under section 202, has also been maintained under the new Code; but a rider has been clamped by the First Proviso to section 202(1) that if it appears to the Magistrate that an offence triable exclusively by the Court of Session has been committed, he shall not make any direction for investigation.”

Section 156(3) occurs in Chapter XII, under the caption: “INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE”; while section 202 is in Chapter XV which bears the heading “OF COMPLAINTS TO MAGISTRATE”. The power to order police investigation under section 156(3) is different from the power to direct investigation conferred by section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin

of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre cognizance stage and avail of section 156(3). It may be noted further that an order made under sub section (3) of section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their p'enary powers of investigation under section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under section 156 and ends with a report or chargesheet under section 173. On the other hand, section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under section 202 to direct, within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus, the object of an investigation under section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

Scope of inquiry under section 202.—Interpreting the scope of the inquiry under section 202, the Supreme Court has held that the same is extremely limited—only to the ascertainment of the truth or falsehood of the allegations made in the complaint—(i) on the materials placed ; (ii) for the limited purpose of finding out whether a *prima facie* case for issue of process has been made out ; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact, in proceedings under section 202, the accused has got absolutely no *locus standi* and is not entitled to be heard on the question whether the process should be issued against him or not.

It is true that in coming to a decision as to whether a process should be issued, the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a *prima facie* case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry under section 202 which culminates into an order under section 204. Thus, in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside :

1. Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.
2. Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

3. Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible.
4. Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like—*Nagawwa v. Veeramma* AIR 1976 SC 1947.

When does section 202(1) apply.—The proviso to section 202(1) would apply only when the Magistrate applies his mind and finds out whether an offence exclusively triable by the Court of Session appears to have been committed as alleged in the complaint. Therefore the Magistrate has the power before taking the complaint on file to direct an investigation to be made by the police—*Nathan v. Vaithinathan* 1975 Cr. LJ 994.

The words in section 202(1) make it abundantly clear that the proceedings under the section are to be instituted only when the Magistrate considers it necessary to postpone the issue of process against the accused and the purpose of proceeding is just to decide whether or not there is sufficient ground for proceeding against the accused—*Boya Lakshman v. Boya Narasappa* ILR 1975 AP 904.

Effect of non-compliance with section 202(2).—Where in a case instituted on a private complaint the committal inquiry was pending when the new Code came into force on 1-4-1974, and the Magistrate, without complying with the provisions of proviso to section 202(2) and section 208, committed the accused to the Court of Session after the commencement of the new Code, the order of commitment was quashed by the High Court. The provisions in these sections are mandatory and the Magistrate must require the complainant to produce all his witnesses and examine them on oath, supply copies of statement etc. These must be complied with in the case of offences triable exclusively by the Court of Session—*Paranjothi Udyar v. State* 1976 Cr. LJ 598. The order issuing process was held violative of these provisions—*Laxmanlal v. JMFC* 1975 Mah. LJ Note No. 17.

After cognizance of an offence which is exclusively triable by the Court of Session has been taken and processes have been issued, the Magistrate cannot revert back to section 202(2) and direct the complainant to produce his witnesses for examination on oath before committing the accused to the Court of Session—*Ram Bharos Mahton v. Ram Lachhan Mahton* ILR 1975 Pat. 67.

At the same time in the case exclusively triable by the Court of Session, a Magistrate cannot direct an investigation to be made by any other person, and as such cognizance taken on the basis of report of such investigation would also be illegal—*Ramautar Sah v. State of Bihar* 1977 Cr. LJ Note No. 26.

Who can complain about non-compliance with section 202(2).—Only the complainant can complain against the refusal of the Magistrate to take cognizance of the case without examining all his witnesses but an accused cannot complain that the Magistrate should not have taken cognizance of the case without examining all the complainant's witnesses. The proviso to section 202(2) is intended to provide the accused with an opportunity to know the case against him and the witnesses who were going to depose against him. The accused does not enter the picture at all at that stage. The provision is not meant to furnish any fodder to the accused—*B.S. Rao v. T.V. Sarma* 1976 Cr. LJ 902.

Dismissal of complaint.

203. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

NOTES

This section corresponds to section 203 of the old Code. However the old section has been revised to incorporate the following changes :

Reference to Magistrate in the section.—The expression “the Magistrate before whom a complaint is made or to whom it has been transferred” was considered to be “unnecessarily lengthy and indirect, as the context leaves no doubt that the power of dismissal is given to the very same Magistrate who has dealt with it, under sections 200 and 202”. This expression has been replaced by a simple expression “the Magistrate”.

Expression “may dismiss the complaint”.—It has been replaced by the expression “shall dismiss the complaint”.

Fresh complaint after dismissal of previous complaint admissible.—A second complaint after the dismissal of a similar complaint is competent. Only in exceptional circumstances will a second complaint be proceeded with. In the case of *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar* AIR 1962 SC 876 the Supreme Court held :

“An order of dismissal under section 203, Criminal Procedure Code is no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances like when the previous order was passed on the incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish, or where new facts which could not with reasonable diligence have been brought on the record in the previous proceedings, have been adduced.”

Opportunity to complainant not necessary.—The section does not require that a Magistrate who has referred a complaint for inquiry or investigation should, after receipt of the report, give an opportunity to the complainant to adduce evidence to show that the police report is wrong or incorrect. There is no such obligation imposed by the section—*T.N. Narasimhamurthy v. Gandhi Siddish* 1976 Mad. LJ (Cr.) 553.

CHAPTER XVI**COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES****Issue of process.**

204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

- (a) a summons-case, he shall issue his summons for the attendance of the accused, or

- (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.
- (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.
- (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.
- (4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.
- (5) Nothing in this section shall be deemed to affect the provisions of section 87.

NOTES

Provision simplified.—This section corresponds to section 204 of the old Code. Old section 204(1) referred to the Second Schedule and to the division made in the fourth column of the Schedule between cases where summons was to issue in the first instance and cases where a warrant was to issue. In both cases certain exceptions were made. These exceptions did not “appear to be based on any logical principle or practical consideration”. In order to simplify the law, sub-section (1) about issue of processes has been related to summons-cases and warrant-cases and revised accordingly. Now the summons will issue in all summons cases and warrant in all warrant cases except when the Magistrate orders otherwise.

List of witnesses.—The prosecution must provide a list of witnesses on which it relies before the Court can issue process. Where, however, the complainant does not intend to produce any witness beyond himself, he is not bound to give negative declaration and the process issued will be valid—*A.P. Jain v. C.N. Jotwani* 1976-77 Mah. Cr. R. (Bom.) 239.

Magistrate may dispense with personal attendance of accused.

205. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

NOTES

This section corresponds to section 205 of the old Code without any change in the provision of the section.

Special summons in cases of petty offence.

206. (1) If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260, the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary

opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader :

Provided that the amount of the fine specified in such summons shall not exceed one hundred rupees.

(2) For the purposes of this section, "petty offence" means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939 (4 of 1939), or under any other law which provides for convicting the accused person in his absence on a plea of guilty.

[(3) *The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.*]

NOTES

Pleading guilty in absentia in petty cases—Law Commission's observations.—This is a new section. It has been inserted to give effect to the recommendations of the Law Commission that special procedure similar to the one contained in section 130 of the Motor Vehicles Act, 1939, enabling the accused to plead guilty *in absentia* in petty cases might be adopted with advantage. The following observations were made by the Law Commission in this regard :

"We consider that this procedure could be adopted with advantage in regard to any offence punishable only with fine not exceeding one thousand rupees. The prosecution may indicate in the police report or complaint whether the case is regarded as a fit one for applying this procedure and if the Magistrate taking cognizance of the offence agrees he may indicate in the summons that if the accused desires to plead guilty to the charge without appearing in Court, he may transmit his plea and the stipulated fine, either by post or by messenger. It should, however, be provided in the law that the amount of fine that might be specified in the summons should not exceed one hundred rupees. The new provision should not apply to any offence under any special or local law which, like the Motor Vehicles Act, 1939, contains a provision for convicting the accused in his absence on a plea of guilty and sentencing to pay a fine."

Modification made by the Joint Committee of Parliament.—The section as it was originally worded gave a discretion to the Magistrate to adopt or not to adopt the simple procedure indicated therein. The Joint Committee, however, considered that the procedure should be compulsory in petty cases unless there were some special reasons justifying a departure. The Joint Committee also considered that the accused should be permitted to plead guilty through his pleader. Accordingly these provisions were amended by the Joint Committee.

Amendment—Enlargement of scope of the facility provided by section 206.—New sub-section (3) has been inserted in section 206 by the Amendment Act, 1978 to enlarge the scope of the facility provided by that section so that the State Government may specially empower a Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 and to other offences punishable with imprisonment for a term not exceeding three months, where a Magistrate is of opinion that imposition of only fine would meet the ends of justice.

Supply to the accused of copy of police report and other documents.

207. In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following :—

- (i) the police report ;
- (ii) the first information report recorded under section 154 ;
- (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173 ;
- (iv) the confessions and statements, if any, recorded under section 164 ;
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173 :

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused :

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

NOTES

Court's duty to furnish copies of documents.—Section 207 is new. Under the old Code the duty of furnishing to the accused copies of statements recorded by the police and other documents was of the police (old section 173). The Commission had observed that this arrangement had not worked satisfactorily as the police did not have the necessary equipment to furnish legible copies in time and it had led to delays in the commencement of proceedings. To remedy this, the duty of furnishing such copies has, as recommended by the Commission, been laid on the Court of the Magistrate who takes cognizance. A further provision has also been made that where the document is voluminous, the accused may be allowed to inspect it personally or through pleader in the Court instead of being furnished with a copy.

Supply of copies of statements and documents to accused in other cases triable by Court of Session.

208. Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable

exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following :—

- (i) the statement recorded under section 200 or section 202, of all persons examined by the Magistrate ;
- (ii) the statements and confessions, if any, recorded under section 161 or section 164 ;
- (iii) any documents produced before the Magistrate on which the prosecution proposes to rely :

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

NOTES

New section 208 makes provision for supply of copies of statements, etc., in cases triable by Court of Session.

Commitment of case to Court of Session when offence is triable exclusively by it.

209. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

- [(v) *commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made ;*]
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial ;
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence ;
- (d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

NOTES

Commitment only formal and Magistrate's function preliminary.—This is a new section. The procedure under the old Code requiring holding of preliminary inquiries by Magistrate in cases exclusively triable by the Court of Session have been dispensed with as such an inquiry had served no useful purpose and, on the contrary, it involved a great deal of infructuous work causing delay in the trial of serious cases. The abbreviated form of inquiry provided for by the amendments made in 1955 and contained in section 207A had been the subject of controversy and opinion had almost been unanimous that this procedure while solving no problems, created fresh problems. Preliminary inquiries have, therefore, been dispensed with in cases triable by a Court of Session. However, to perform certain preliminary functions like granting copies, preparing the records, notifying the Public Prosecutor, etc., provision has been made that the Magistrate taking cognizance of the case will perform these preliminary functions and formally commit the case to the Court of Session. As regards private

complaints in cases triable exclusively by a Court of Session, the inquiry into the complaint by the Magistrate under section 202 will serve the purpose of a preliminary scrutiny.

Power of Committing Magistrate to grant bail.—The Committing Magistrates also have been given the power to release a person on bail even though he was in custody at the time the case was committed to the Court of Session. The Joint Committee had observed that if this power was not given to the Committing Magistrates the accused persons would be put to difficulty by being compelled to go to the Court of Session for obtaining bail.

Amendment—Clarification as to commitment.—The Amendment Act, 1978 has replaced clause (a) of section 209 by a new clause which clarifies that the commitment is to be made after complying with the provisions of section 207 or 208 and that the committing court will also have the power to make an order for the remand of the accused in custody until the commitment has been made. This is intended to remove the difficulty actually experienced in cases where the Committing Magistrate is unable to commit the accused on the same day.

Scope of power of Committing Magistrate.—In *Sanjay Gandhi v. Union of India* AIR 1978 SC 514, the Supreme Court has laid down the following propositions bearing upon the committal of cases where the offence is triable exclusively by the Court of Session :

1. The Committing Magistrate has no power to discharge the accused. Nor has he power to take oral evidence except where a specific provision in the Code enjoins, e.g., section 306.
2. The Committal Court cannot launch on a process of satisfying itself whether a *prima facie* case has been made out on the merits. That jurisdiction which was vested in him under the old Code has been taken away under the new Code. The narrow inspection hole through which the Committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report appears to the Magistrate to show an offence triable solely by the Court of Session.
3. In the above situation, the Magistrate has simply to commit the case to the Court of Session for trial. If by error, wrong section of the Penal Code is quoted, he may look into that aspect. If facts are made-up to make it a Sessions Case, it is perfectly open to the Sessions Court to discharge the accused under section 227.

Duty of Magistrate under section 209.—The Magistrate while exercising powers under section 209 is not expected to act mechanically or as a mere post office fulfilling an empty formality. He is expected to apply his judicial mind to the facts and circumstances of each case and then pass the committal order—*Shrawan v. State of Maharashtra* 1976 Mah. LJ 654. He has to consider the allegations made against the accused and if, on consideration of the materials, it appears to him that the offence is triable exclusively by the Court of Session, then alone commit the accused to that court. If, however, it appears that the alleged offence is not the one triable exclusively by the Court of Session, then he has to proceed with the trial of the case. The consideration by the Magistrate at this stage should be confined only to find out if *prima facie* the offence alleged is exclusively triable by the Court of Session. The policy of the legislature seems to be that the Court of Session should not be burdened with the trial of offences which are not exclusively triable by it. The matter

has therefore to be considered at two stages, namely, (i) by the Magistrate in a *prima facie* manner under section 209, and (ii) by the Sessions Court itself under section 225—*Prem Sukh Lal v. State* 1977 Cr. LJ 47.

In forming the opinion under section 209, the Magistrate is not to weigh the evidence and the probabilities in the case. He is not required to hear the accused. In other words, he is not to hold a judicial inquiry—*State v. Jairam* 1976 Cr. LJ 42. Even in cases in which the commitment proceeding was pending under the old Code, section 209 is attracted and the Magistrate after satisfying himself has to simply commit the case to the Sessions Court—*Gobardhan Mahto v. Mossamat Bari* ILR 1975 Pat. 384.

Whether committal proceeding is inquiry.—The proceedings taken by a Magistrate under section 209 would fall within the ambit of the term 'inquiry' and the Magistrate has a power under section 309(2) to remand the accused to custody if inquiry under section 209 is adjourned or postponed by him. Under the section it is Magistrate's duty to satisfy himself whether the case is exclusively triable by the Court of Session. Although for this purpose he has not to record any evidence, etc., but only to study the papers that have been placed before him by the police, the process of study may take time and he may be required to adjourn the case to a future date. That process of study which makes it appear to the Magistrate that the case was triable exclusively by the Court of Session does fall within the expression 'inquiry' as defined in section 2(g) of the Code—*Swaroop Singh v. State of Rajasthan* 1976 Cr. LJ 1655.

Effect on pending proceedings.—If, under the new Code, the offence has ceased to be exclusively triable by the Court of Session and is triable by the Magistrate, then no order for commitment can be passed and the Magistrate must proceed to try the case himself. If a Judicial Magistrate commits an accused for such offence, then the Sessions Judge should frame a charge and under section 228 transfer the case to the court of the Chief Judicial Magistrate for trial in accordance with law as a warrant case instituted on a police report—*State v. Phula* [1976] 78 Punj. LR 293. Where committal enquiries were pending on 1-4-1974 under the old Code, it was held that in view of proviso to section 484(2)(a), section 209 became applicable and since under Schedule I of the new Code the offences were not triable exclusively by the Court of Session, the committal of the case under section 209 to the Session Court was invalid—*State of Karnataka v. Abdul Rahman* 1976 Cr. LJ 928. The matter would of course be different if the commitment proceeding in this behalf was not pending at the commencement of the new Code—*Adya Prasad v. Rajindera Mahto* 1975 Cr. L.J. 997. In the case of pending committal proceedings the Magistrate must submit the case to the Sessions Judge under section 209 without taking any evidence—*Sakati Narayan v. Bhasani Lachu* 1975 Cr. LJ 995. Therefore, if by virtue of the new Code the Magistrate is competent to try the offence eventually disclosed during the course of or at the close of the inquiry which was pending at the commencement of the new Code, the accused cannot be committed for trial to Court of Session though that offence was, under the old Code, exclusively triable by a Court of Session—*Dwarkanath v. Vithal Tulsiram* 1976 Mah. LJ 714.

Magistrate has no power to discharge.—Section 209(2) does not empower the Magistrate to discharge an accused on the ground that the offence (under section 302 IPC) did not 'appear' to him to have been made out on the material placed before him. That power is vested in the Sessions Judge under section 277—*State of Karnataka v. S.Y. Kattimani* 1976 Cr. LJ 575].

Whether Sub-Divisional Magistrate can commit a case.—In *Visheshwar v. State* 1976 Cr. LJ 521 it has been observed that Sub-Divisional Magistrate can commit a case to the Court of Session under section 209 as his powers have been kept intact under section 484(2)(b). In *Sukhdeo v. State of Bihar* 1976 Cr. LJ 1350, however, it has been observed that 'Magistrate' means Judicial Magistrate. As such Sub-Divisional Magistrate in taking cognizance of an offence and in directing the case to be sent to District and Sessions Judge presumably under section 209 acts without jurisdiction.

Commitment in cross-cases.—If one of the two cross cases, one is triable by the Magistrate and the other exclusively by the Court of Session, the Magistrate has no right to try the other case, and the Court of Session can try the case relating to any offence under the Penal Code as provided in section 26. In these circumstances the Magistrate must direct that the cross case arising out of the same incident requires to be tried by the same Court—*Anil Sonavane v. State* 78 BLR 325. When all the offences in question were not exclusively triable by the Court of Session but triable by a Magistrate, there was no question about the Magistrate being satisfied that these were exclusively triable by the Court of Session. Section 484(2)(a) or 209 is not applicable to the case. The order of commitment was, therefore, neither legal nor made in accordance with law—*State v. Bikash Chandra Majumdar* 1976 Cr. LJ 1800.

Committal proceedings and the accused.—From the various judicial decisions, the following propositions have emerged in so far as the accused is concerned :

1. *Commitment without furnishing papers.*—Committal orders can be passed without furnishing papers to the accused under section 207—*Lakshmi Brahman v. State* 1976 Cr. LJ 118.
2. *Non-production of accused at committal proceeding.*—The object of section 209 is that the commitment order should not be passed, when the accused is absconding or has never been brought before the Magistrate at all. Non-production of the accused before the Magistrate at the time of commitment when they were in jail, is a mere irregularity and is curable under section 465(1)—*Onkar Singh v. State* 1976 Cr. LJ 1774.
3. *Release on bail.*—The Committing Court cannot release the accused on bail in cases of offences which are punishable with death or imprisonment for life since that power is vested, under section 437, only in the High Court or the Court of Session. But the Magistrate acting under section 209 can cancel the bail order which is passed under section 167(2)—*Ghela Ramshi v. State* 1975-76 Mah. Cr. 299 and remand the accused to custody while committing the case, provided that he considers it necessary to do so—*Kapoor Singh v. State of Haryana* 1975 Cr. LJ 1007. But it is open to the accused to move for bail again either to the Court of Session or the High Court for granting fresh bail on merits—*Prem Charan v. State of UP* 1976 Cr. LJ 1451. One of the main features of section 209 is that the Committing Magistrate has been given power to admit a person to bail, though such person may be in custody at the time of commitment of the case to the Court of Session. The High Court has no power to direct the committing Magistrate that in the event of committing the case to the Court of Session if the accused person is not in custody, he shall take bail from him for appearance before the Court of Session. Such a direction, if given, will amount to taking away the discretionary power given to him under clause (b) of section 209—*Rewatdan v. State of Rajasthan* 1975 Cr. LJ 691.

Examination of approver—Whether mandatory.—The examination of the approver is a condition precedent to the passing of the committal order. Section 306 concerning tender of pardon which is a special provision should be read with section 209 which is a general provision. The Magistrate taking cognizance of offence does not examine the approver, the entire committal proceedings will be vitiated—In *re. Ramasamy* 1976 Cr. LJ 770 ; *State v. Chokkiah & Kishor* [1975] 2 AP LJ 200.

Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

210. (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

NOTES

Object of the new section.—Sometimes when a serious case is under investigation by the police, some of the persons concerned file a complaint and quickly get an order of acquittal either by collusion or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the Joint Committee inserted this new section to provide that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if no such report is received, the Magistrate would be free to dispose of the complaint case. This new section is intended to secure that private complainants do not interfere with the course of justice.

Conditions for applicability of the special procedure.—The conditions for applicability of the provisions of section 210 are :

- a. there should be a case instituted otherwise than on a police report pending enquiry or trial ;
- b. investigation by the police should be in progress in relation to the same offence which is the subject of the case ;
- c. a report should be filed by the police officer under section 173 ; and

- d. the Magistrate should take cognizance of an offence against a person who is an accused in the complaint case.

The section provides a special procedure for trial of cases referred to therein and directs that the Magistrate shall enquire into or try the complaint case and the case arising out of the police report together, as if both were instituted on a police report. The special procedure does not provide for examination of witnesses for the purpose of framing a charge in the complaint case and, therefore, the need for a second cross-examination of the witness for the complainant does not arise. Section 210(2) does not warrant any objection against the examination of witnesses mentioned in the complaint case—*Annamma v. Antony Chacko* 1976 Mad. LJ (Cr.) 529.

This is a preventive measure. It is to avoid, as far as possible, taking cognizance of the offence again and to avoid separate trials for the same offence or taking cognizance of the same offence more than once. The provisions of section 210 are in perfect accord with the principle that the proper course for a Magistrate acting under section 190(1) irrespective of the nature of its trial, is to take cognizance of the offence only once—*Essakutty Haji v. Raman* 1974 Mad. LJ (Cr.) 675.

Once the criteria laid down in sub-section (1) are satisfied then if the Magistrate takes cognizance of 'any offence' against any person who is an accused in the complaint case on the basis of police report, it is his duty under section 210(2) to try the two cases together as if they were instituted on a police report. The word 'any' does not denote or refer to a particular or specific offence. It suggests that it is sufficient if cognizance of 'an offence' is taken. Sub-section (2) requires two ingredients to be satisfied. They are—(a) On the basis of a police report cognizance of an offence, though it may be different from the offence mentioned in the complaint, is taken ; and (b) the cognizance of the offence is taken against even only one of the persons accused in the complaint case.

Where both the ingredients are satisfied, the procedure to be followed in the two cases is as if both were instituted on a police report. Sub-section (3) of section 210, which is couched in negative terms, also shows that as long as the police report relates to one of the accused mentioned in the complaint case and the Magistrate takes cognizance of an offence on the basis of the police report the case will fall under sub-section (2) and the procedure provided therein will have to be followed—*State v. Har Narain* 1976 Cr. LJ 562.

Case of accused persons not charge-sheeted.—The words 'relate to any accused' in section 210(3) do not refer to all the accused persons in respect of whom the investigation was made but refer to those accused persons who were charge-sheeted for trial in the case. Any other interpretation will nullify the power of the Magistrate to hold enquiry under section 202, and would also render nugatory the provision of section 319. The merger contemplated by sub-section (2) of section 210 holds good only in respect of the complaint case so far as it relates to the common accused persons mentioned in the complaint case and in the charge-sheet. The said merger does not affect the Magistrate's power to proceed against additional accused persons in that case as per section 319.

By the said merger the Magistrate also does not lose his right to enquire or direct investigation under section 202, into the complaint case in respect of the

other accused persons named in the complaint petition. The case against such other accused persons must proceed separately—*Tikaram Agarwalla v. State* ILR 1975 Cuttack 1491.

Whether application necessary.—The reading of section 210 makes it clear that it is not necessary that a party should move the court by an application. The section casts a duty on the Magistrate to stay the proceedings of the case which according to his knowledge or information is also being investigated by the police. He should do so without any application being moved by any party—*Bhim Ram v. Loharu Ram* ILR 1975 HP 824.

CHAPTER XVII

THE CHARGE

A. Form of charges

Contents of charge.

211. (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code (45 of 1860), that it did not fall within any of the general exceptions of the said Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(b) A is charged under section 326 of the Indian Penal Code (45 of 1860), with voluntarily causing grievous hurt to B by means of an instrument for

shooting. This is equivalent to a statement that the case was not provided for by section 335 of the said Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definition of those crimes contained in the Indian Penal Code (45 of 1860); but the sections under which the offence is punishable must in each instance, be referred to in the charge.

(d) A is charged under section 184 of the Indian Penal Code (45 of 1860) with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

NOTES

Uniform rule about language of Court.—Section 211 corresponds to section 221 of the old Code. Sub-section (6) of section 221 of the old Code had provided that in the Presidency-towns the charge should be written in English and elsewhere it should be written either in English or in the language of the Court. This distinction has been done away with. The new provision now lays down a uniform rule that the charge shall be written in the language of the Court.

Particulars as to time, place and person.

212. (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 :

Provided that the time included between the first and last of such dates shall not exceed one year.

NOTES

Requirement of time, place and person and exception in certain cases.—This section corresponds to section 222 of the old Code. Sub-section (1) lays down the important general rule that full particulars as to the time and place of the offence and as to the person against whom or the thing in respect of which the offence was committed should be given in the charge. Sub-section (2) provides a limited relaxation of the rule in a case of criminal breach of trust or of dishonest misappropriation. In these two cases it is sufficient to specify the gross

sum embezzled or misappropriated and the dates between which the offence was committed, subject to the limitation that the interval between the first and the last of such dates shall not exceed one year. The charge so framed shall be deemed to be a charge of one offence within the meaning of section 219.

When manner of committing offence must be stated.

213. When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence is punishable.

214. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Effect of errors.

215. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

(a) A is charged under section 242 of the Indian Penal Code (45 of 1860), with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the

word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, call witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haider Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

NOTES

Sections 213 to 215 correspond to sections 223 to 225 of the old Code, respectively, without any change in the old provisions.

Court may alter charge.

216. (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

NOTES

Omission of mention of jury trial.—This section combines the provisions of sections 227 to 230 of the old Code. Sub-section (1) which corresponds to sub-section (1) of section 227 of the old Code does away with the words “or, in the case of trials by jury before the Court of Session or High Court, before the verdict of the jury is returned” in view of the abolition of trial by jury.

Recall of witnesses when charge altered.

217. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed—

- (a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;
- (b) also to call any further witness whom the Court may think to be material.

NOTES

When the court can refuse to recall a witness.—This section corresponds to section 231 of the old Code. Under the old section it was provided that whenever a charge was altered or added to by the Court after the commencement of the trial, the prosecutor and the accused should be allowed “to recall or re-summon and examine, with reference to such alteration or addition, any witness already examined”. Where an application was made for re-summoning such witnesses, the Court was bound to grant it, and could not refuse it on the ground that the accused would not be prejudiced or even on the ground that the alteration was of such a nature that it could not affect the evidence—*Ramalinga v. Emp.* AIR 1929 Mad. 200 and *Nagendra Nath v. Emp.* AIR 1932 Cal. 486. Now it has been provided that when a charge is altered after the commencement of the trial, a Court may refuse to re-summon or re-examine a witness if it considers that the application therefor has been made for the purpose of vexation or delay or for defeating the ends of justice. Similar power of refusal is vested in the Magistrate while acting under sections 243(2) and 247 on an application for issue of a process for compelling attendance of a witness or production of a document.

B. Joinder of charges

Separate charges for distinct offences.

218. (1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately :

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

Illustration

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

NOTES

Relief to accused.—This section corresponds to section 233 of the old Code. It lays down, like the old Code, that for every distinct offence there should be a separate charge and each charge, except in certain specified cases as referred to in sections 219, 220, 221 and 223, should be tried separately. This is necessary to ensure fair trial to the accused. It has also been provided that where the accused himself wants a joint trial or a joinder of charges, the Court may allow the same notwithstanding the strict rules in the other provisions. This provision is designed to give relief to the accused if the rules regarding joinder of charges work to his detriment. There was no such provision in the old Code.

The expression “distinct offence” which occurs in this section has been fully explained by the Supreme Court in the case of *Banwari Lal v. Union of India* AIR 1963 SC 1620.

Three offences of same kind within year may be charged together.

219. (1) When a person is accused of more offences that one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law :

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

NOTES

Sub-sections (1) and (2).—This section corresponds to section 234 of the old Code. Sub-section (1) provides that not more than three offences of the same kind committed within a period of twelve months are triable at one trial. Sub-section (2) lays down the principle as to when offence may be regarded as being “of the same kind”.

Trial for more than one offence.

220. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

Illustrations to sub-section (1)

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code (45 of 1860).

(b) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code (45 of 1860).

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code (45 of 1860).

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code (45 of 1860).

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code (45 of 1860).

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such

charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code (45 of 1860).

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code (45 of 1860).

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code (45 of 1860).

The separate charges referred to in illustrations (a) to (h), respectively, may be tried at the same time.

Illustrations to sub-section (3)

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code (45 of 1860).

(j) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code (45 of 1860).

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code (45 of 1860).

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with section 466) and 196 of that Code (45 of 1860).

Illustration to sub-section (4)

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code (45 of 1860).

NOTES

This section corresponds to section 235 of the old Code. Sub-section (2) is a new one which has been inserted on the basis of the recommendation of the Law Commission. While recommending the insertion of this sub-section, the Law Commission observed :

Joinder of charges in regard to offence of misappropriation, etc.—“The application of section 235, particularly in relation to conspiracies, has been dealt with in a number of decisions of the Supreme Court—*Purshottam Das Dalmia v. The State* AIR 1961 SC 1589; *R.K. Dalmia v. Delhi Administration* [1963] 1 SCR 253; *State v. Ganeshwar Rao* AIR 1963 SC 1850 and the scope of the section in this respect is now well settled. There is some controversy [see

case-law discussed in *Sriram v. The State* AIR 1956 All. 466] as to whether the joinder of three charges of criminal breach of trust or misappropriation with three charges of falsification of accounts connected with those offences is permissible, even when all the offences have been committed within the space of twelve months. A charge specifying the gross sum, framed with reference to section 222(2), is no doubt a charge of one offence within the meaning of section 234, but this legal fiction contained in section 222(2) is only for the purposes of section 234—*D.K. Chandra v. The State* AIR 1952 Bom. 177 ; *Krishna Murthy v. Abdul Subhan* AIR 1962 Mys. 128. While the falsification of accounts connected with a single act of misappropriation can be said to form the same transaction and consequently a joint trial of the two offences is permissible under section 235(1), it is not permissible to try together even two offences of misappropriation and two connected falsification of accounts, much less a series of misappropriations charged as one offence under section 222(2) and all the connected falsifications of accounts.

This position creates practical difficulties. Criminal breach of trust (or misappropriation) is often accompanied by falsification of accounts (or analogous offences) committed either to facilitate the breach of trust or to conceal its commission. The exclusion of such connected offences of falsification of accounts from the fiction created by section 222(2) deprives this section of its usefulness in many cases. While misappropriation on several occasions within a year accompanied by falsification of several items in the account books may be fairly described as parts of the same transaction, the several acts of falsifying the accounts cannot be clubbed together in one charge."

Where it is doubtful what offence has been committed.

221. (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once ; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

NOTES

Sub-sections (1) and (2) of this section correspond respectively to sections 236 and 237 of the old Code.

Views of Calcutta High Court.—Interpreting the provisions of old section 236 which are incorporated in this sub-section, the Calcutta High Court in the case of *Istahar Khandkar v. Emperor* AIR 1936 Cal. 796 had observed :

“The confusion which has arisen about the interpretation of section 236 is due to the way in which it is worded. What is really meant seems to be if, a single act or series of acts is of such a nature that it is doubtful which of several offences has been committed if the facts as alleged by the prosecution are established, the accused may be charged with the commission of all or any of such offences. The facts which can be proved are only ascertained after the completion of the trial and therefore the charge cannot be made to depend on them ; moreover in the terms of the section, the doubt must arise from the nature of the act or series of acts, and the doubt would arise because of the inferences which might be drawn from those acts.”

Views of Bombay High Court.—Later on in the case of—*Emperor v. Kasinath* AIR 1942 Bom. 71 (FB) where the prosecution was in doubt as the age of a girl who was alleged to have been kidnapped or abducted, the Bombay High Court dissenting from the above view of the Calcutta High Court, observed :

“The condition on which the section comes into operation must be complied with, and there must be a single act or series of acts of a certain nature, and the nature must raise a doubt about which of several offences the facts which can be proved, will constitute. But we think that doubt may include a doubt as to what exact facts within the ambit of the series of acts postulated can be proved. At the time the charge is framed, the prosecution can never know exactly what facts they will succeed in establishing. The most promising witness may break down in cross-examination ; and in our view the prosecution are entitled to say : ‘If we prove certain of our alleged facts, then such and such an offence will be committed ; but if we prove other of such facts, then it will be another offence’, and to charge the offences in the alternative. That is the exact case here, the prosecution being in doubt whether they could prove that the girl was under sixteen. We think illustration (a) to section 236 shows that the Calcutta view of the section is too narrow.”

Correct view.—This view is accepted as a correct view. Thus if the offending act or series of acts alleged in the case is of such a nature that it may, depending on facts that can be proved at the trial, constitute one or more than one, of several offences and doubt exists as to the particular offence or offences with which the accused should be charged, he may be charged with, and tried at one trial for all or any of such offences, or he may be charged with having committed in the alternative one or the other of such offences.

Conditions for application of sub-section (2).—The old section 237, which is incorporated in this sub-section, was the subject matter of interpretation in the case of *Begu v. Emperor* AIR 1925 PC 131. In this case several accused were charged under section 302 of IPC, but as regards some of them the evidence did not sufficiently or definitely prove that they were present at and had taken part in the murder. It was, however, found that they had wrapped up the corpse, placed it on a horse, and gone away with it. These accused were convicted under section 201 of I.P.C. though not charged thereunder and their convictions were upheld

by the Lahore High Court. The case went up to the Privy Council. Dismissing the appeal, the Privy Council observed :

“The illustration (to sections 237) makes the meaning of these words quite plain. A man may be convicted of an offence, although there has been no charge in respect of it, if the evidence is such as to establish a charge that might have been made. That is what happened here. The three men who were sentenced to rigorous imprisonment, were convicted of making away with the evidence of the crime by assisting in taking away the body. They were not charged with that formally, but they were tried on evidence which brings the case under section 237.” Later in the case of *Thakur Shah* AIR 1943 PC 192 the Privy Council emphasised that the wide power to convict the accused of a crime not charged is subject to two conditions, namely, (1) that the crime of which the accused was found guilty was established by the evidence, and (2) that having regard to the information available to the prosecuting authorities, it was doubtful which of one or more offences would be established by the evidence.”

When offence proved included in offence charged.

222. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations

(a) A is charged, under section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406.

(b) A is charged, under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

NOTES

This section corresponds to section 238 of the old Code except sub-section (4) which has been substituted for the old sub-section (3).

Charge for attempt to commit an offence.—Sub-section (3) provides that when a person is charged with an offence, he may be convicted of an attempt to commit that offence although such attempt is not separately charged. It has been held

that conviction for abetment would not be permissible where the accused was only charged with the substantive offence. *Padmanaba v. Emperor* [1910] ILR 33 Mad. 264 ; *Emperor v. Ragya* AIR 1924 Bom. 432 ; *Hulas Chandra v. Emperor* AIR 1927 Cal. 63 ; *Hirasa v. Emperor* AIR 1947 Pat. 350 ; *Chote v. Emperor* AIR 1948 All. 168 ; *Narvir Chand v. The State* AIR 1952 MB 17. However, in the case of *Samuel John v. Emperor* AIR 1935 All. 935 a conviction for abetment of rape was upheld though the offence charged was one of rape, and the abetment was treated as a 'minor' offence under sub-section (2) of section 238.

*Conviction for minor offence when permissible under sub-section (4).—*While suggesting substitution of sub-section (3) of old section 238 by new sub-section (4), the Law Commission observed :

"While section 238(3) saves the provisions of section 198 and section 199, it is incomplete in that it does not refer to the other analogous sections which also require a complaint or sanction for taking cognizance of particular offences. For example, sections 195, 196 and 196A also require the complaint of a particular person or authority for the offences dealt with therein ; and sections 197 and 197A require the previous sanction of the Government for prosecution in respect of certain offences. It appears to be desirable to make it clear, in section 238, that a conviction for a minor offence is not authorised where the requirements imposed by the law for the initiation of proceedings in respect of the minor offence have not been complied with. This clarification will incidentally help to codify the proposition that "section 238 must yield to section 195"—*Kantir Missir v. Emperor* AIR 1930 Pat. 98. Thus, where the complaint is of an offence under section 211, Indian Penal Code, there cannot be a conviction under section 182 on the ground that the latter is a minor offence. The Supreme Court has also observed that the provisions of section 195 cannot be evaded by the device of charging a person with an offence to which it does not apply, and then convicting him of an offence to which it does, upon the ground that such latter offence is a "minor offence"—*Basir-ul-Huq v. State of West Bengal* AIR 1953 SC 293.

This aspect of the matter may be illustrated by the facts in an Allahabad case [*Narain Singh v. Emperor* AIR 1925 All. 129], wherein a sentence under section 173, Indian Penal Code, was set aside by the High Court. The Magistrate's explanation, that he took cognizance under section 225B, Indian Penal Code, and convicted the accused under section 173 by virtue of section 238, Code of Criminal Procedure, was not accepted, as there was no complaint of a public servant as required by section 195."

What persons may be charged jointly.

223. The following persons may be charged and tried together, namely :—

- (a) persons accused of the same offence committed in the course of the same transaction ;
- (b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence ;
- (c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months ;
- (d) persons accused of different offences committed in the course of the same transaction ;

- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last named offence ;
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence ;
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence ; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges :

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

NOTES

This section corresponds to section 239 of the old Code, except the small variations made in sub-clauses (b) and (e) and the addition of a proviso to clause (g).

Grammatical amendment in old clause (b).—A small grammatical amendment to the old corresponding clause has been made in order to give the present form of the clause.

Inclusion of 'cheating' in sub-clause (e).—In the corresponding provisions of the old clause, the word "cheating" has been inserted in order to include the offence of cheating within the purview of this clause so that persons accused of cheating and those accused of offences connected with the possession of property obtained by cheating may be tried together. This amendment was suggested by the Joint Committee of Parliament.

Order to be passed only if expedient, sub-clause (g).—Proviso to this clause is a new addition. The Joint Committee had amended this proviso in order that the wide discretion given to the Magistrate thereunder may be regulated further by specifically providing that the order would be passed only if it is expedient.

When persons to be charged and tried jointly.—This section lays down when persons may be charged and tried jointly. In the case of *State of Andhra Pradesh v. Ganeshwar Rao* AIR 1963 SC 1850, the Supreme Court has elucidated the provisions of the old section 239 which correspond to the provisions of this section. The clauses of this section are not mutually exclusive. It is permissible to combine the provisions of two or more clauses. Joint trials of several persons partly by applying one clause and partly by applying another clause is permissible.

Conspiracy and offence committed in pursuance thereto.—The Privy Council, in the case of *Babulal v. Emperor* AIR 1938 PC 130, has held that the offence of conspiracy and any offence committed in pursuance of the conspiracy are to

be regarded as forming part of the same transaction for purposes of section 235 (new section 220) and persons accused of such offences can be tried under section 239(d).

Withdrawal of remaining charges on conviction on one of several charges.

224. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.

NOTES

This section corresponds to section 240 of the old Code without any change in the old provision.

CHAPTER XVIII

TRIAL BEFORE A COURT OF SESSION

Trial to be conducted by Public Prosecutor.

225. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

NOTES

Section 225 corresponds to section 270 of the old Code.

Procedure for trial before Court of Session—summarised.—Sections 225 to 237 deal with the procedure in trials before a Court of Session. This procedure is practically the same as that prescribed for the trial of warrant-cases by a Magistrate with slight variations. At the first hearing the Public Prosecutor will open the case and the Judge, after going through the record and hearing the submissions of the accused, if any, will consider whether there are sufficient grounds for proceeding against the accused. If, in his opinion, there are no such grounds, he shall discharge the accused. Otherwise, he shall frame a charge which shall be read out and explained to the accused and his plea will be recorded. If he pleads guilty, the Judge may convict him. Otherwise, a date will be fixed for hearing of evidence for the prosecution. The accused will have the right to cross-examine witnesses. Witnesses may be recalled for cross-examination. If after hearing the evidence and examining the accused and hearing the arguments, the Judge considers that there is no evidence to support the prosecution, he shall acquit the accused. Otherwise, the accused shall be called upon to enter on his defence and adduce his evidence for which there will be an adjournment. After the completion of the defence evidence, the prosecution and the defence will be heard and the Court will deliver judgment. If the judgment is one of conviction, the accused will be given an opportunity to make his representation, if any, on the punishment proposed to be awarded and such representation shall be taken into

consideration before imposing the sentence. This last provision has been made because it may happen that the accused may have some grounds to urge for giving him consideration in regard to the sentence such as that he is the bread-winner of the family of which the Court may not be made aware during the trial.

The procedure to be followed in the case of a prosecution for defamation against high dignitaries and public servants now contained in section 198E has been incorporated in section 237 with some modifications.

Opening case for prosecution.

226. When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

NOTES

Section 226 corresponds to section 286(1) of the old Code without any change in the old provision.

Discharge.

227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

NOTES

Section 227 corresponds to section 251A(2) of the old Code without any change in the old provisions.

Object of the section.—It is clear from the provision that the Sessions Judge has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion that there is not sufficient ground for proceeding against the accused. The object of the provision regarding recording of reasons is to enable the superior court to examine the correctness of the Sessions Judge's order of discharging the accused. The High Court in exercise of its power under section 482, is entitled to go into the reasons given in the order and to determine for itself whether the order is justified by the facts and circumstances of the case and quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed—*State of Karnataka v. L.M. Muniswamy* AIR 1977 SC 1489.

Framing of charge.

228. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

- (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to

the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report ;

- (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

NOTES

Power of Sessions Judge to transfer case to CJM.—This section corresponds to section 251A(3) and (4) of the old Code. An amendment was made in this section by the Joint Committee of Parliament. Under the original provisions, as was observed by the Joint Committee, “the Sessions Judge had only two alternatives open to him. If he considered that there was no sufficient ground for proceeding against the accused he had to discharge the accused. Otherwise, he had to proceed with the trial. There may, however, be cases intermediate between these two where although an offence has been made out, it might not be an offence exclusively triable by a Court of Session or the Judge might consider that the offence was not sufficiently serious and could be tried by a Court of Magistrate. The Committee has, therefore, amended the section to confer on the Sessions Judge the power to direct that the case may be transferred for trial to the court of the Chief Judicial Magistrate.”

The Judge has been given discretion to frame a charge and then order the transfer of the case in clause (a) of section (1).

Scope of sections 227 and 228.—As has been observed by the Supreme Court in *State of Bihar v. Ramesh Singh* AIR 1977 SC 2018 reading the two provisions in sections 227 and 228 together, it would be clear that, at the beginning and initial stage of the trial, the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. The judge is not obliged, at that stage of the trial, to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under section 227 or section 228. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. The evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no

sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt, the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under section 227 or section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under section 228 and not under section 227.

Conviction on plea of guilty.

229 If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

NOTES

Whether accused's pleader can plead to the charge.—This section corresponds to sections 251A(5) and 271(2) of the old Code. With reference to section 251A(5), several High Courts have considered the question whether in a warrant-case the pleader of the accused can be allowed to plead to the charge—*Dorabshah* ILR 50 Bom. 250 ; *Champa* AIR 1950 Cal. 161 and *Kanchanbai* AIR 1959 MP 150. The view taken by the courts is that if the accused is present, his plea must be recorded even though his pleader is present, but if the attendance of the accused has been dispensed with, the pleader can be allowed to plead to the charge.

Date for prosecution evidence.

230. If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

NOTES

Provisions re. non-acceptance of guilty plea and issue of process for prosecution witnesses.—The section corresponds to sections 251A(6) and 272 of the old Code. Sub-section (6) of section 251A of the old Code provided that if the accused refused to plead, or did not plead, or claimed to be tried, the date for the examination of witnesses should be fixed. It did not, however, cover the case where the accused pleaded guilty but the plea was not accepted by the Court under section 251A(5), the corresponding new section being 229. Further, there was no express provision in sub-section (6) or elsewhere for the issue of process to compel the attendance of prosecution witnesses. Most of the High Courts have expressed the view that a process can be asked for—*Public Prosecutor* AIR 1965 AP 162 ; *Paban* AIR 1965 Cal. 387 ; *Phulloo* AIR 1966 All. 18 ; but this lacuna was judicially noticed in the case of *State v. Shib Charan* AIR 1962 Ori. 157. The new provision takes care of this lacuna.

Evidence for prosecution.

231. (1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

Acquittal.

232. If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.

Entering upon defence.

233. (1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

Arguments.

234. When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply :

Provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the Judge, make his submissions with regard to such point of law.

NOTES

Section 231 corresponds to sections 251A(7) and 286, section 232 to section 289(2) and (3), section 233 to sections 251A(8) and (9) and 289 (4), and section 234 corresponds to sections 290 and 292, of the old Code without any change in the old provisions.

Scope of sections 232 and 233.—Under section 232, a Sessions Judge has to decide whether there is evidence to show commission of offence, but at that stage he should not consider what value should be attached to such evidence. If he finds that there is no evidence, then he has power to acquit the accused. It is necessary for the Sessions Judge to look into the prosecution evidence and material brought out of the accused's examination and then decide whether there is any evidence or not to show the commission of offence—*Kumar v. State of Karnataka* 1976 Cr. LJ 925.

The law confers an important statutory right upon the accused person to take his chance of acquittal up to the stage of section 232. Till then he is not bound or obliged to disclose the names of his witnesses. If the Judge did not acquit him under section 232, he has to call upon him (the accused) to enter on his defence.

At that stage the accused must apply for issue of process for summoning his witnesses. It is not legal to pass a blanket order calling upon both the prosecution and the defence to produce evidence immediately after framing a charge against the accused. Any denial of this right to lead evidence in support of defence would vitiate the whole trial—*Prem v. State of Haryana* 1975 Cr. LJ 1420.

Judgment of acquittal or conviction.

235. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

NOTES

New provision in the section.—Section 235 corresponds to section 309 of the old Code in a revised form with the addition of new provision in sub-section (2), namely, 'hear the accused on the question of sentence'. This important and salutary provision has been explained below in detail.

Law Commission's observation on the new provision.—The Law Commission merely observed (in a foot-note) that "the requirement about hearing the accused on the question of sentence before passing sentence has been added as a desirable provision". This provision has been made "because it may happen that the accused may have some grounds to urge for giving him consideration in regard to the sentence such as that he is the bread-winner of the family of which the Court may not be made aware during the trial".

SC on true construction of S. 235(2).—The Supreme Court has in *Santa Singh v. State of Punjab* AIR 1976 SC 2386 brought out "true construction" of section 235(2) of the new Code and held that it requires that in every trial before a Court of Session, there must first be a decision as to the guilt of the accused. The court must, in the first instance, deliver a judgment convicting or acquitting the accused. If the accused is acquitted, no further question arises. But if he is convicted, then the court has to "hear the accused on the question of sentence", and then pass sentence on him according to law. When a judgment is rendered convicting the accused, he is, at that stage to be given an opportunity to be heard in regard to the sentence and it is only after hearing him that the court can proceed to pass the sentence.

Hearing provision mandatory.—The hearing as contemplated by section 235(2) is not confined merely to hearing oral submissions, but is intended to give an opportunity to the prosecution and the accused to place before the court facts and material relating to various factors bearing on the sentence. If these materials and facts are contested by either side, hearing contemplates production of evidence for establishing the same. This provision is "mandatory" and deviation from it "cannot be described as mere irregularity in the course of trial". The Court set aside the sentence of death imposed on the accused (appellant) by the trial Court on the ground that the requirement of this new provision "was not complied with inasmuch as no opportunity was given to the appellant after recording his conviction, to produce material and make submissions in regard to the sentence to be imposed on him". The non-com-

pliance with the new provision the Court observed, “amounts to bypassing an important stage of the trial” and by omitting it altogether the trial cannot be said to be as contemplated in the Code. This deviation constitutes disobedience to an express provision of the Code as to the mode of the trial and hence cannot be regarded as a mere irregularity. It goes to the root of the matter and the resulting irregularity is of such a character that it vitiates the sentence. As such, failure of justice must be regarded as implicit and section 465 cannot in the circumstances have any application in such case.

No such provision in old Code.—There was no such provision in the old Code of Criminal Procedure and under it, whatever the accused wished to submit in regard to the sentence had to be stated by him before the arguments in the case concluded and the judgment was delivered and “there was no separate stage for being heard in regard to sentence”. The accused under the old Code had to produce material and make his submissions in regard to sentence “on the assumption” that he was ultimately going to be convicted and as this was “most unsatisfactory” the legislature introduced the new provision in the new Code.

Importance of sentencing.—Describing section 235(2) as one in consonance with the modern trends in penology and sentencing procedures, the Court observed: In modern criminal jurisprudence, “sentencing is an important stage in the process of administration of criminal justice—as important as the adjudication of guilt and that (sentencing) should receive serious attention of the Court. A proper sentence was the amalgam of many factors such as the nature and circumstances of the offence—extenuating or aggravating—the prior criminal record of the offender, his age, employment, educational background, home life, sobriety and social adjustment, emotional and mental condition, prospects for rehabilitation and the possibility of return of the offender to normal life in the community. It was because of these factors in the matter of sentencing that the legislature felt, in introducing this new provision for this purpose, a separate stage should be provided after conviction when the Court can hear the accused in regard to these factors and then pass a proper sentence on the accused.

Hearing how done.—It is necessary for this purpose that facts of social and personal nature—sometimes altogether irrelevant, if not injurious at the stage of fixing the guilt—may have to be brought to the notice of the Court when the actual sentence is determined. The relevant material “may be placed before the Court by means of affidavits, but if either party disputes the correctness or veracity of the material sought to be produced by the other an opportunity would have to be given to the party concerned to lead evidence for the purpose of bringing such material on record”. The hearing on the question of sentence would be rendered devoid of all meaning and content and it would become an idle formality if it were confined merely to hearing oral submissions without any opportunity being given to the parties, particularly to the accused, to produce material in regard to various factors bearing on the question of sentence.

Social purpose of section 235(2).—The imperative language of sub-section (2) leaves no room for doubt that after recording the finding of guilt and the order of conviction, the Court is under an obligation to hear the accused on the question of sentence unless it releases him on probation of good conduct or after admonition under section 360. The right to be heard on the question of sentence has a beneficial purpose, for a variety of facts and considerations bearing on the sentence can, in the exercise of that right, be placed before the Court.

The social compulsions, the presence of poverty, the retributive instinct to seek an extra-legal remedy, the sense of being wronged, the lack of means to be educated in the difficult art of an honest living, the parentage, the heredity—all these and similar other considerations can, hopefully and legitimately, tilt the scales on the propriety of sentence. The mandate of section 235(2) must, therefore, be obeyed in its letter and spirit.

Whether failure to hear entails remand.—But failure on the part of the convicting court to hear an accused on the question of sentence does not necessarily entail a remand to that Court in order to afford to the accused that opportunity. The Supreme Court has in *Dagdu v. State of Maharashtra* AIR 1977 SC 1579 observed that the fact that in *Santa Singh v. State of Punjab* AIR 1976 SC 2386 the Court remanded the matter to the Sessions Court does not spell out the ratio of the judgment to be that in every such case there has to be a remand. Remand is an exception, not the rule, and ought therefore to be avoided as far as possible in the interests of expeditious, though fair, disposal of cases. As has been observed in that case there is no mandatory direction for remanding a case in *Santa Singh v. State of Punjab*, nor is remand the inevitable recipe of section 235(2)—*per Goswami, J.*

Higher Court can intervene in case of failure to hear.—If, for any reason, therefore, the Court omits to hear an accused on the question of sentence, and the accused makes a grievance of it in the higher court, it would be open to that court to remedy the breach by giving a hearing to the accused on the question of sentence. The opportunity has to be real and effective, which means that the accused must be permitted to adduce before the court all the data which he desires to adduce on the question of sentence. Accordingly, in *Dagdu v. State of Maharashtra* AIR 1977 SC 1579 the Supreme Court itself heard the submissions on the question of death sentence imposed upon the accused before confirming the sentence.

Section not applicable in case of minimum sentence.—As observed by the Supreme Court in *Tarlok Singh v. State of Punjab* AIR 1977 SC 1747, the object of section 235(2) is to give a fresh opportunity to the convicted person to bring to the notice of the Court such circumstances as may help the Court in awarding an appropriate sentence having regard to the personal, social and other circumstances of the case. Of course, when it is a case of conviction under section 302 IPC if the minimum sentence is imposed the question of providing an opportunity under section 235 would not arise.

Failure to hear not to affect conviction.—Failure to give such an opportunity will not, however, affect the conviction under any circumstances.

Appellant court can also give hearing on sentence.—It may well be that in many cases sending the case back to the Sessions Court may lead to more expense, delay and prejudice to the cause of justice. In such cases it may be more appropriate for the appellant court to give an opportunity to the parties in terms of section 235(2) to produce the material they wish to adduce instead of going through the exercise of sending the case back to the trial court. This may, in so many cases, save time and help secure prompt justice—*Tarlok Singh v. State of Punjab* AIR 1977 SC 1747.

Previous conviction.

236. In a case where a previous conviction is charged under the provisions of sub-section (7) of section 211, and the accused does not admit that he

has been previously convicted as alleged in the charge, the Judge may, after he has convicted the said accused under section 229 or section 235, take evidence in respect of the alleged previous conviction, and shall record a finding there on:

Provided that no such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 229 or section 235.

NOTES

This section corresponds to sections 310 and 251A(13) of the old Code.

Procedure in cases instituted under section 199(2).

237. (1) A Court of Session taking cognizance of an offence under sub section (2) of section 199 shall try the case in accordance with the procedure for the trial of warrant-cases instituted otherwise than on a police report before a Court of Magistrate :

Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.

(2) Every trial under this section shall be held *in camera* if either party thereto so desires or if the Court thinks fit so to do.

(3) If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or any of them, it may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor of a State or the Administrator of a Union territory) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one.

(4) The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(5) Compensation awarded under sub-section (4) shall be recovered as if it were a fine imposed by a Magistrate.

(6) No person who has been directed to pay compensation under sub-section (4) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) The person who has been ordered under sub-section (4) to pay compensation may appeal from the order, in so far as it relates to the payment of compensation, to the High Court.

(8) When an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

NOTES

Procedure for dealing with defamation of high dignitaries.—This section corresponds to the provisions of sub-sections (5) to (11) of section 198 of the old Code. The Joint Committee considered that the procedure to be adopted by a Court of Session, while dealing with an offence of defamation of the persons mentioned in sub-section (2) of section 199, namely, President of India, Vice-President of India, Governor of a State, Administrator of a Union Territory, Minister of the Union or of a State or of a Union Territory or any other public servant, should be the procedure prescribed for the trial of a warrant-case instituted on a complaint before a Court of Magistrate because the procedure prescribed for a Court of Session would not be appropriate for these cases. The provision was accordingly modified.

CHAPTER XIX

TRIAL OF WARRANT-CASES BY MAGISTRATES

A. Cases instituted on a police report

Compliance with section 207.

238. When, in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207.

NOTES

Procedure summarised.—Chapter XIX deals with the procedure regulating the trial of warrant-cases by Magistrates upon a police report and otherwise than on a police report and also with the conclusion of trial. Sections 238 to 250 correspond to sections 250 to 259 of the old Code. Under section 239, if a Magistrate discharges the accused at the initial stage on finding the charge to be groundless, he is required to record his reasons for doing so. A specific provision has been added to confer a power on the Magistrate to summon witnesses. As in the case of sessions trial, the accused has been given an opportunity to make representation on the question of sentence before the Court passes any sentence after conviction. To discourage frivolous complaints, section 250 enables the Court to award compensation to the accused if there was no reasonable ground for accusation and thus the scope of the corresponding old section 250 has been widened. Further, the amount of compensation for an accusation without reasonable cause has been raised from half the amount of the fine to the full amount of fine.

Section 238 corresponds to section 251A(1) of the old Code. The provisions of the corresponding old section have been revised in the light of the insertion of section 207 whereunder the duty to supply documents referred to therein to the accused, has now been cast on the Magistrate instead of on the police which was the case under the old Code.

When accused shall be discharged.

239. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

NOTES

Magistrate's duty to record reasons for discharge of accused.—This section corresponds to section 251A(2) of the old Code. Sub-section (2) of that section did not require the Magistrate to record his reasons for discharging the accused. As the Magistrate has to reach that conclusion after a proper consideration of the documents and hearing both sides and his order of discharge is subject to revision, it has been considered necessary that he should record his reasons in the order and accordingly a provision has been made to that effect.

Framing of charge.

240. (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Conviction on plea of guilty.

241. If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

Evidence for prosecution.

242. (1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of witnesses.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution :

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

Evidence for defence.

243. (1) The accused shall then be called upon to enter upon his defence and produce his evidence ; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

NOTES

Sections 240 to 243 incorporate the provisions contained in sub-sections (3) to (10) of section 251A of the old Code.

B. Cases instituted otherwise than on police report

Evidence for prosecution.

244. (1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

NOTES

Modification.—This section corresponds to section 252 of the old Code. The provisions of the old section 252 have been revised in the following respects and incorporated in the present section :

- a. The words “complaint if any” have been substituted by the word “prosecution” and the proviso has been omitted.
- b. From the wording of section 252(2) it appeared that the responsibility was thrown on the Magistrate to ascertain the names of any persons likely to be acquainted with the case and summon such of them as he might consider necessary. In order to bring the underlying idea of this sub-section, viz., it is the prosecution who should submit a list of witnesses, the sub-section has been revised.

When accused shall be discharged.

245. (1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

NOTES

Discharge a judicial order.—This section corresponds to section 253 of the old Code. In view of the comprehensive provision in section 313 relating to examination of the accused, the words “and making such examination (if any) of the accused as the Magistrate thinks necessary”, occurring in the old section have been considered practically superfluous and therefore omitted. When the Magistrate finds that no *prima facie* case has been made out against the accused, there will be hardly anything about which he could be examined. It has also been considered desirable to make it clear that the Magistrate should record his reasons for discharging the accused, as an order of discharge is a judicial order and subject to revision—*L. Naryan v. P. Chellareddi* AIR 1961 AP 117. These provisions have been revised accordingly.

Procedure where accused is not discharged.

246. (1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.

NOTES

Modifications in old provisions.—This section corresponds to sections 254, 255 and 256(1) of the old Code. The provisions of the old sections have been revised as under :

Section 254 (old).—(1) Reference to examination of the accused has been considered unnecessary and therefore omitted. (2) The opening words of the section have been amended to read “If, when such evidence has been taken, or at any previous stage of the case,”.

Section 255 (old).—The words “whether he is guilty” occurring in sub-section (1) have been replaced by the words “whether he pleads guilty” as these have been considered more appropriate.

Evidence for defence.

247. The accused shall then be called upon to enter upon his defence and produce his evidence ; and the provisions of section 243 shall apply to the case.

C. Conclusion of trial

Acquittal or conviction.

248. (1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon :

Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).

Absence of complainant.

249. When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

NOTES

Section 247 corresponds to sections 256(1) and 257 ; section 248 to sections 258 and 251A(11), (12) and (13) and section 249 corresponds to section 259, of the old Code.

Purport of section 248(2).—Section 248(2) gives an opportunity to both parties to bring to the notice of the court facts and circumstances which will help personalize the sentence from a reformatory angle. It is fundamental to put such provision to dynamic judicial use—*Md. Giasuddin v. State of AP* AIR 1977 SC 1926.

Compensation for accusation without reasonable cause.

250. (1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one ; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided ; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons-cases as well as to warrant-cases.

NOTES

Important changes incorporated in the section.—This section corresponds to section 250 of the old Code. The section incorporates the following changes :

(i) the words "that accusation against them or any of them was false and either frivolous or vexatious" occurring in sub-section (1) of the old section have been replaced by the words "that there was no reasonable ground for making the accusation against them or any of them" ;

(ii) the words "that the accusation was false and either frivolous or vexatious" occurring in sub-section (2) of the old section have been replaced by the words "that there was no reasonable ground for making the accusation" ;

(iii) the words "fifty rupees" occurring in sub-section (3) of the old section have been replaced by the words "one hundred rupees".

While suggesting the above-mentioned amendments, the Law Commission observed :

Law Commission's observations on the proposed changes.—"We are not, however, satisfied with the scope of the power given to the Court. At present, the Court must be satisfied that the accusation was false and either frivolous or vexatious. We should have thought that a false accusation would be necessarily vexatious ; but that view has not found favour with the Courts, and we understand that in very few cases, Magistrates resort to section 250 on the view that its requirements are rarely satisfied. To discourage frivolous complaints, it would, we feel, be proper to widen the scope of this provision. It is obvious that a complainant who brings a false complaint knowing it to be false needs to be punished. Knowledge on the complainant's part is, however, a subjective matter, and in any case hard to prove. We propose to put in its place an objective test, namely, the total absence of any reasonable ground for the accusation. In most cases, we think this would be the same as actual knowledge of the falsity of the accusation. We therefore propose, that in any case where the Magistrate acquits or discharges the accused and is further of opinion that there was no reasonable ground for making the accusation against them or any of them, he may award compensation to the accused. The only other change we suggest is that the limit of non-appealable orders under this provision when made by a first class Magistrate should be raised from Rs. 50 to Rs. 100. No change in the procedure is required."

CHAPTER XX

TRIAL OF SUMMONS-CASES BY MAGISTRATES

Substance of accusation to be stated.

251. When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

Conviction on plea of guilty.

252. If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.

NOTES

Attendance of complainant when dispensed with.—Chapter XX regulates the procedure to be observed by Magistrates in the trial of summons-cases. Now

a specific provision has been made to the effect that where a complainant is being represented by a pleader or an officer conducting prosecution, the Magistrate may dispense with the attendance of the complainant. A procedure regulating the cases of certain petty offences, where the accused pleads guilty to the charge on receipt of summons issued under section 206, has been included in this Chapter.

Plead guilty.—Sections 251 and 252 correspond to sections 242 and 243 of the old Code with modifications to make the language used therein unambiguous. Old section 242 had provided that the accused “shall be asked if he has any cause to show why he should not be convicted”, the intention being to provide an opportunity to the accused to plead guilty or not guilty. However, the language of sections 242 and 243, as the Law Commission put it, was likely to create the impression that an admission of guilt alone might not be sufficient ground for a conviction. Therefore, a straightforward provision has been made for the accused to plead guilty or not at that stage. The implications of the expressions “pleading guilty” or “not guilty” are understood by all concerned. If the accused pleads guilty, he can be convicted at once; but if he does not, the case has to be decided on the evidence.

Pleader may answer charges.—The change in the language of the old sections 242 and 243 is also intended to set at rest a controversy that seemed to have arisen about the meaning of the old section 242 when considered along with section 205. Section 205 enabled a Magistrate issuing a summons for an accused to dispense with his personal attendance and to permit him to appear by his pleader. This power was mostly used in summons-cases. Yet in such cases also the proceedings had to start with the questioning of the accused about the accusation against him and if that questioning had to be personal, the power mentioned in section 205 could not be usefully exercised. One view was that in cases where the personal attendance of the accused was dispensed with his pleader could in his place, plead to the “charge” or make an answer to the statement of allegations. The other view was that such an admission of guilt being a serious matter, if made negligently by a pleader, it could burden the accused with severe penalty, so that the accused alone could make such an admission and the questioning of the accused must be intended to be personal. However, the modified language of old section 242 when read with section 205 (new) makes it clear that where the personal attendance of the accused has been dispensed with, his pleader may answer to the charge.

Conviction on plea of guilty in absence of accused in petty cases.

253. (1) Where a summons has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

(2) The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.

NOTES

New procedure for petty cases.—This is new provision which has been made to regulate the procedure where special summons in case of a petty offence has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate.

Procedure when not convicted.

254. (1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

NOTES

Old section revised.—This section corresponds to section 244 of the old Code. The language of sub-section (1) thereof has been revised as it was “unnecessarily verbose”.

In sub-section (2) the word “prosecution” has been substituted for the word “complainant” in order to cover police cases besides complaint cases.

Acquittal or conviction.

255. (1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

NOTES

Accused not to be convicted of a different offence.—This section corresponds to sections 245 and 246 of the old Code. The words “and (if he thinks fit) examine the accused” occurring in the old section 245(1) have been excluded from the corresponding new section 255(1).

Further in order to bring out clearly the intention underlying the old section 246 (corresponding to sub-section (3) of present section 255) that a person

accused of a particular offence triable as a summons-case, should not be convicted of a totally different and unconnected offence about which he may never have been questioned and against which he may never have defended himself, a qualifying clause "if the Magistrate is satisfied that the accused would not be prejudiced thereby", has been added.

Non-appearance or death of complainant.

256. (1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day :

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

NOTES

Complainant's appearance through pleader.—This section corresponds to section 247 of the old Code. The only change which has been incorporated in the present section is to extend the scope of the proviso so as to empower the Magistrate to proceed with the case where the complainant is represented by his pleader or by the officer conducting the prosecution.

Complainant's death.—As to the question whether the complainant's death ends the proceedings in a summons case, the Law Commission observed that as a matter of policy, the answer should depend on the nature of the case and the stage of the proceedings at which death occurs. The Commission observed :

"It is impracticable to detail the various situations that may arise and the considerations that may have to be weighed. We think, in the circumstances, that the decision should be left to the judicial discretion of the court, and, the legal provision need only be that death and absence stand on the same footing. We trust this will in practice work satisfactorily."

Sub-section (2) of this section is intended to achieve this objective.

Withdrawal of complaint.

257. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

NOTES

Withdrawal when more than one complainant.—This section corresponds to section 248 of the old Code. The old section, as it was worded, gave rise to a doubt

whether the complaint could be withdrawn regarding some of the accused if there be more than one. The Law Commission, while suggesting amendments to give the section the present form, had observed that this power, like that of compounding an offence, should be exercisable concerning each accused separately when there are more than one accused.

Power to stop proceedings in certain cases.

258. In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

NOTES

Result of stoppage of proceeding.—This section corresponds to section 249 of the old Code. The expressions “District Magistrate” and “any other Magistrate” occurring in the old section have now been replaced by the expressions “Chief Judicial Magistrate” and “any other Judicial Magistrate” respectively. Besides, the provisions of the old section have been modified by the Joint Committee of Parliament to give the present shape to the section. The Joint Committee felt that “stoppage of proceedings as such conveyed no precise idea and that it would be more satisfactory to provide for an acquittal or discharge, as the case may be. Where the proceedings have made some substantial progress, such as when most of the material witnesses have been examined, the result of stoppage of proceedings should be an acquittal of the accused whereas if the stoppage is done at the early stages it should be a discharge. The Court will pass appropriate orders in each case.” Amendments made by the Joint Committee are directed to this end.

Power of Court to convert summons-cases into warrant-cases.

259. When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined.

NOTES

Power of Magistrate to convert cases.—This is a new section added by the Joint Committee of Parliament. While suggesting the addition of this section the Joint Committee observed:

“.....the Magistrate should have the power to convert the summons-case into a warrant-case in serious cases if he considers it necessary to do so in the interests of justice. In such cases the proceedings should commence from the start. The need for this has arisen particularly because the scope for adopting summons case procedure has been enlarged under the new Code.”

CHAPTER XXI
SUMMARY TRIALS

Power to try summarily.

260. (1) Notwithstanding anything contained in this Code—

- (a) any Chief Judicial Magistrate ;
- (b) any Metropolitan Magistrate ;
- (c) any Magistrate of the first class specially empowered in this behalf by the High Court,

may, if he thinks fit, try in a summary way all or any of the following offences —

- (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years ;
- (ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed two hundred rupees ;
- (iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed two hundred rupees ;
- (iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed two hundred rupees ;
- (v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860) ;
- (vi) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506 of the Indian Penal Code (45 of 1860) ;
- (vii) abetment of any of the foregoing offences ;
- (viii) an attempt to commit any of the foregoing offences, when such attempt is an offence ;
- (ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871).

(2) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by this Code.

NOTES

Scope of summary trial widened.—Chapter XXI deals with the procedure in summary trials. Under the old Code, in a summary trial the summons procedure was required to be followed in summons-cases and the warrant procedure in warrant-cases. This distinction has now been done away with and the procedure has been simplified by providing that in summary trials all cases should be tried by the summons procedure, whether the case is a summons-case or a warrant-case. The scope of old section 260 to which the present section corresponds has been widened by including offences punishable with imprisonment up to two years instead of six months.

Now the Magistrates who can try a case summarily are :

- a. Chief Judicial Magistrate (instead of District Magistrate).
- b. Metropolitan Magistrate (corresponding to Presidency Magistrate).
- c. Magistrate of the first class specially empowered for the purpose by the High Court *instead of* by the State Government, which was the empowering authority under the old Code.

The other changes which have been incorporated in section 260 are consequential to the changes made elsewhere in the Code such as the abolition of Benches of Magistrates, the enlargement of the definition of a summons-case, etc.

Summary trial legal but inappropriate.—Section 260 does provide that trial of cases should be summary trials but there may be instances where the Magistrate may deem it necessary to try the same as regular one. In *L.N. Mukhopadhyaya v. State* ILR 1975 Cuttack 712, it was *held* that even though it might be held that the summary trial was legal, there could be no doubt that the summary trial was not appropriate in the instant case.

Summary trial by Magistrate of the second class.

261. The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.

NOTES

Power on JM of second class.—This section corresponds to the section bearing the same number in the old Code. In view of the abolition of Benches of Magistrates, summary powers to a limited extent have been conferred on Judicial Magistrates of the second class. The power is restricted only to offences punishable for a term not exceeding six months.

Procedure for summary trials.

262. (1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

NOTES

Summons-case procedure in case of summary trial.—This section corresponds to the section bearing the same number in the old Code. Sub-section (1) of old section 262 had provided that in summary trials the procedure prescribed for summons-cases shall be followed in summons-cases and the procedure prescribed for warrant-cases shall be followed in warrant-cases except as mentioned in sections 263, 264 and 265 of the old Code. The new section lays down that in all summary trials the summons-case procedure should be followed whether the case involved is a summons-case or a warrant-case. This is because, as the Law Commission put it, no particular advantage would be gained by following the more complicated warrant-case procedure in the case to be tried summarily.

Record in summary trials.

263. In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely :—
- (a) the serial number of the case ;
 - (b) the date of the commission of the offence ;
 - (c) the date of the report or complaint ;
 - (d) the name of the complainant (if any) ;
 - (e) the name, parentage and residence of the accused ;
 - (f) the offence complained of and the offence (if any) proved, and in case coming under clause (ii), clause (iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed ;
 - (g) the plea of the accused and his examination (if any) ;
 - (h) the finding ;
 - (i) the sentence or other final order ;
 - (j) the date on which proceedings terminated.

Judgment in cases tried summarily.

264. In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

NOTES

Sections 263 and 264 correspond to the sections bearing the same number in the old Code.

Defects in the old provisions.—The old sections 263 and 264 dealt with the procedure to be followed in non-appealable and appealable case respectively. The main difference between the two sections was that while in the former no evidence need be recorded, in the latter case the Magistrate was required to record the substance of the evidence. The defect of this scheme, as the Law Commission put it, “is that procedure is made to depend on the result. In other words, if the need to record evidence is dependent on appealability, and appealability in turn depends on the sentence awarded, then the Magistrate has to decide on the guilt of the accused and sentence that should be awarded even before he has heard the evidence. This artificiality has led to some conflict in the interpretation of the words ‘in which appeal lies’ appearing in section 264” [see discussion of the case-law in *Antonio Vincente v. The State* AIR 1968 Goa 81]. Another shortcoming in the scheme was that the right of revision against a conviction and the right of an appeal against acquittal were rendered virtually ineffective in so far as the higher Court could not conduct a meaningful enquiry into the correctness of the trial court’s order for want of a proper record of the case. Accordingly the Law Commission in its Fourteenth Report, Vol. 2, page 827, had recommended that the substance or evidence should form part of the record of the case in appealable and non-appealable cases alike. These defects have now been removed from the new Code.

Language of record and Judgment.

265. (1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate and the record or judgment so prepared shall be signed by such Magistrate.

NOTES

This section corresponds to the section bearing the same number in the old Code.

Judgment in court's language.—Sub-section (1) of the old section 265 had *inter alia* provided that the language of the record and judgment, if so directed by the Court immediately superior, should be in the mother tongue of the presiding officer. Further a presiding officer was required to write the record himself but in fact the factual particulars of the case used to be recorded by the clerk of the Court. The new section takes care of these matters and provides that the language of the record and judgment shall be the language of the Court. Other changes made in this section are consequential to the abolition of Benches of Magistrates.

CHAPTER XXII**ATTENDANCE OF PERSONS CONFINED OR DETAINED IN PRISONS****Definitions.**

266. In this Chapter,—

- (a) “detained” includes detained under any law providing for preventive detention ;
- (b) “prison” includes,—
 - (i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail ;
 - (ii) any reformatory, Borstal institution or other institution of a like nature.

Power to require attendance of prisoners.

267. (1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court,—

- (a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or
- (b) that it is necessary for the ends of justice to examine such person as a witness,

the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

Power of State Government to exclude certain persons from operation of section 267.

268. (1) The State Government may, at any time, having regard to the matters specified in sub-section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under section 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-section (1), the State Government shall have regard to the following matters, namely :—

- (a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison ;
- (b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison ;
- (c) the public interest, generally.

Officer in charge of prison to abstain from carrying out order in certain contingencies.

269. Where the person in respect of whom an order is made under section 267—

- (a) is by reason of sickness or infirmity unfit to be removed from the prison ; or
- (b) is under committal for trial or under remand pending trial or pending a preliminary investigation ; or
- (c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained ; or
- (d) is a person to whom an order made by the State Government under section 268 applies,

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining :

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

Prisoner to be brought to Court in custody.

270. Subject to the provisions of section 269, the officer in charge of the prison shall, upon delivery of an order made under sub-section (1) of section 267 and duly countersigned, where necessary, under sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he was confined or detained.

Power to issue commission for examination of witness in prison.

271. The provisions of this Chapter shall be without prejudice to the power of the Court to issue, under section 284, a commission for the examination, as a witness, of any person confined or detained in a prison; and the provisions of Part B of Chapter XXIII shall apply in relation to the examination on commission of any such person in the prison as they apply in relation to the examination on commission of any other person.

NOTES

Modifications in old provisions.—Sections 266 to 271 correspond to the provisions of the Prisoners (Attendance in Courts) Act, 1955 in so far as they applied to Criminal Courts. The following main modifications have, however, been made on the basis of the recommendations of the Law Commission contained in the Fortieth Report :

- a. The definition of “confinement in a prison” has been replaced by a definition of “detained” in order to bring within the scope of these provisions those persons also who are detained under any law providing for preventive detention.
- b. The definition of “State Government” has been omitted.
- c. An order passed by a Magistrate of the second class requiring the officer in charge of a prison to bring a person detained before him is now required to be countersigned by the Chief Judicial Magistrate instead of the District Magistrate. It has now expressly been provided that the Chief Judicial Magistrate may decline to countersign such an order.
- d. It has been considered sufficient to authorise the State Government to issue executive instructions to prison authorities “for carrying out the purposes” of the new provisions instead of authorising the State Government to make rules for supplementing these provisions.

CHAPTER XXIII

EVIDENCE IN INQUIRIES AND TRIALS

A. Mode of taking and recording evidence

Language of Courts.

272. The State Government may determine what shall be, for purposes of this Code, the language of each Court within the State other than the High Court.

NOTES

Power of the State Government to determine the language of Court.—This is a new section which specifically empowers the State Government to determine the language of each Court within the State other than the High Court.

Evidence to be taken in presence of accused.

273. Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

Explanation : In this section, “accused” includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

NOTES

General rule of evidence in a trial.—This section corresponds to section 353 of the old Code. It lays down a general rule that at any trial or other proceeding under the Code, all evidence shall be taken in the presence of the “accused” or, when his personal attendance is dispensed with, in the presence of his pleader. The expression ‘accused’ includes a person in relation to whom any proceeding under Chapter VIII (Security for keeping the peace and for good behaviour) has been commenced. The corresponding provision of the old Code applied only to a person who was accused of an offence.

Record in summons-cases and inquiries.

274. (1) In all summons-cases tried before a Magistrate, in all inquiries under sections 145 to 148 (both inclusive), and in all proceedings under section 446 otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of his evidence in the language of the Court :

Provided that if the Magistrate is unable to make such memorandum himself, he shall, after recording the reason of his inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.

NOTES

Recording of evidence under the old section.—This section corresponds to section 355 of the old Code. The old section governed the recording of evidence in three categories of cases, namely : (i) summons-cases tried before a Magistrate other than a Presidency Magistrate ; (ii) cases relating to offences mentioned in clauses (b) to (m) of old section 260(1) when tried by a Magistrate of a first or second class but not summarily ; and (iii) proceedings under old section 514 (section 446 new) otherwise than in the case of a trial. The section did not refer to the language in which the evidence was to be recorded. The old section did not apply to summons-cases tried before a Presidency Magistrate. The second category of cases covered by the old section were warrant-cases relating to offences mentioned in clauses (b) to (m) of old section 260(1) as referred to

above. The Law Commission recommended exclusion of such cases in view of the possibility of substantial sentences being imposed when not tried summarily. The Commission considered full record of evidence in such cases desirable. On the other hand, in inquiries relating to disputes as to immovable property under old sections 145, 146 and 147, a brief record of evidence has been considered sufficient as the object of these proceedings is not determination of any right to immovable property but the prevention of an apprehended breach of the peace and the proceedings are intended to be summary in character.

Modifications in old section.—The provisions of the old section as incorporated in the new one have been modified as under :

- a. A specific reference has been made in the section as to the language in which the memorandum of the substance of the evidence of a witness shall be made—the language being the ‘language of the Court’.
- b. The summons-cases tried before a Presidency Magistrate (now Metropolitan Magistrate) have been brought within the purview of the new section.
- c. The warrant-cases to which the old section applied have been excluded from its purview.
- d. Inquiries under old Chapter XII relating to disputes as to immovable property have been covered by the new section.

Record in warrant-cases.

275. (1) In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

(2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-section (1).

(3) Such evidence shall ordinarily be taken down in the form of a narrative ; but the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Record in trial before Court of Session.

276. (1) In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open court or, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

[(2) *Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of question and answer.*]

(3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record.

Language of record of evidence.

277. In every case where evidence is taken down under section 275 or section 276,—

- (a) if the witness gives evidence in the language of the Court, it shall be taken down in that language ;
- (b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record ;
- (c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record :

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

NOTES

Recording of evidence provisions in three separate sections.—Sections 275 to 277 correspond to sections 356, 357 and 359 of the old Code, respectively. Under the old Code, the mode of recording evidence in trials of warrant-cases before Magistrates and sessions trials was prescribed partly in section 356 and partly in section 359. The language of the record was dealt with partly in section 356 and partly in section 357. Now these provisions have been put in three separate sections ; one dealing with the mode of recording evidence in warrant-cases, another dealing with the mode of recording evidence in sessions trials and the third dealing with the language of the record in all these cases.

Recording of evidence by Magistrate himself.—Sections 275 and 276 lay down that the evidence of witnesses should be recorded by the Magistrate/Judge himself or under his direction. Recording of evidence by another officer of the Court is permitted only in special circumstances where the Magistrate owing to any physical or other incapacity is not in a position to do so. To ensure this it has been also laid down that the Magistrate should record a certificate that the evidence could not be taken down by himself for the reasons referred to above.

Amendment in section 276—Evidence in narrative form.—Under the new Code, in Sessions trials, the evidence was to be recorded ordinarily in the form of questions and answers. This method caused delay and, therefore, section 276 has been amended by the Amendment Act, 1978 to provide, as under the old Code, that evidence shall ordinarily be taken down in the form of a narrative, but the Judge may take down any particular question and answer *verbatim*.

Procedure in regard to such evidence when completed.

278. (1) As the evidence of each witness taken under section 275 or section 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.

(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.

NOTES

Procedure after evidence of witnesses.—This section corresponds to section 360 of the old Code. It prescribes the procedure to be followed after the evidence of each witness has been taken under section 275 or section 276. The new section incorporates only one or two formal amendments. In sub-section (2) the words "Presiding Judge" have been substituted for the words "Sessions Judge" and in sub-section (3) reference has been made to "*the record of the evidence* is in a language different from that in which it has been given" instead of "*the evidence is taken down* in a language different from that in which it has been given".

Interpretation of evidence to accused or his pleader.

279. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Remarks respecting demeanour of witness.

280. When a presiding Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

NOTES

Sections 279 and 280 correspond to sections 361 and 363 of the old Code, respectively, without any change in the old provisions.

Record of examination of accused.

281. (1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the

examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.

(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

(3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable, in the language of the Court.

(4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(5) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

NOTES

Modifications in old provisions.—This section corresponds to the provisions of sections 362(2A) and 364 of the old Code. It relates to the mode of recording the examination of the accused and the language of such examination and of the record. It applies to all Magistrates including Metropolitan Magistrates. Unlike the old section 364, it excludes Courts of Judicial Commissioners from its scope.

In sub-section (2) of the old section 364, the requirement that the record shall be signed only "when the whole is made conformable to what the accused declares is the truth" has been considered not very appropriate. Accordingly, in the corresponding new sub-section (5), this requirement has been done away with. The provision in sub-section (4) of the new section that the accused shall be at liberty to explain or add to his answers has been considered sufficient for practical purposes.

Interpreter to be bound to interpret truthfully.

282. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Record in High Court.

283. Every High Court may, by general rule, prescribe the manner in which the evidence of witnesses and the examination of the accused shall be taken down in cases coming before it; and such evidence and examination shall be taken down in accordance with such rule.

NOTES

Rule-making power of High Court.—Sections 282 and 283 correspond to sections 543 and 365 of the old Code respectively.

The old section 365 conferred a rule-making power on the High Court, *not being a Court of Judicial Commissioner*, to prescribe the manner of recording the evidence in cases coming before the Court. The corresponding new section 283 confers such a rule-making power on Judicial Commissioners besides the High Courts of States. It also covers expressly examination of the accused.

B. Commissions for the examination of witnesses

When attendance of witness may be dispensed with and commission issued.

284. (1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court or Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter :

Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union territory as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution, direct that such amount as the Court considers reasonable to meet the expenses of the accused, including the pleader's fees, be paid by the prosecution.

NOTES

Expenses of accused for participation in Commission.—This section corresponds to section 503(1) of the old Code. The sub-section (2) of the new section has, however, been added in order to provide that the Court should have a discretion to require payment by the prosecution of such expenses as the Court considers reasonable to enable the accused and his counsel to participate in the examination on Commission. Such payment is confined to cases where a commission is issued for the examination of a prosecution witness.

Commission to whom to be issued.

285. (1) If the witness is within the territories to which this Code extends, the commission shall be directed to the Chief Metropolitan Magistrate or Chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to be found.

(2) If the witness is in India, but in a State or an area to which this Code does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission, as the Central Government may, by notification, prescribe in this behalf.

NOTES

Commission to be addressed to CJM.—This section corresponds to section 504 of the old Code. Unlike the old Code, however, the new section lays down that a commission for the examination of a witness shall be addressed to the Chief Judicial Magistrate *instead of* the District Magistrate in view of the separation of the judiciary from the executive.

Execution of commissions.

286. Upon receipt of the commission, the Chief Metropolitan Magistrate or Chief Judicial Magistrate, or such Metropolitan or Judicial Magistrate as he may appoint in this behalf, shall summon the witness before him or proceed to the place where the witness is, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

Parties may examine witnesses.

287. (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Court or Magistrate directing the commission may think relevant to the issue, and it shall be lawful for the Magistrate, Court or officer to whom the commission is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate, Court or officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Return of commission.

288. (1) After any commission issued under section 284 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court or Magistrate issuing the commission; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872 (1 of 1872), may also be received in evidence at any subsequent stage of the case before another Court.

Adjournment of proceeding.

289. In every case in which a commission is issued under section 284, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Execution of foreign commission.

290. (1) The provisions of section 286 and so much of section 287 and section 288 as relate to the execution of a commission and its return shall apply in respect of commissions issued by any of the Courts, Judges or Magistrates hereinafter mentioned as they apply to commissions issued under section 284.

(2) The Courts, Judges and Magistrates referred to in sub-section (1) are—

- (a) any such Court, Judge or Magistrate exercising jurisdiction within an area in India to which this Code does not extend, as the Central Government may, by notification, specify in this behalf ;
- (b) any Court, Judge or Magistrate exercising jurisdiction in any such country or place outside India, as the Central Government may, by notification, specify in this behalf, and having authority, under the law in force in that country or place, to issue commissions for the examination of witnesses in relation to criminal matters.

NOTES

Sections 286 to 290 correspond to sections 505, 506, 507, 508 and 508A of the old Code respectively, without any change in the old provisions.

Deposition of medical witness.

291. (1) The deposition of a civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under this Chapter, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject-matter of his deposition.

NOTES

Summoning medical witness—obligatory.—This section corresponds to section 509 of the old Code. It deals with the deposition of a medical witness. The old section had provided that the Court, if it thinks fit, might summon and examine such a witness but the new section makes it incumbent on the Court to summon and examine a medical witness if so desired by the prosecution or the accused.

Evidence of officers of the Mint.

292. (1) Any document purporting to be a report under the hand of any such gazetted officer of the Mint or of the India Security Press (including the office of the Controller of Stamps and Stationery) as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code, although such officer is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine any such officer as to the subject-matter of his report :

Provided that no such officer shall be summoned to produce any records on which the report is based.

(3) Without prejudice to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), no such officer shall, except with the permission of the Master of the Mint or the India Security Press or the Controller of Stamps and Stationery, as the case may be, be permitted—

- (a) to give any evidence derived from any unpublished official records on which the report is based ; or
- (b) to disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.

NOTES

This is a new section which has been added on the basis of the recommendations contained in the 25th and 41st Reports of the Law Commission.

Reports of certain Government scientific experts.

293. (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely :—

- (a) any Chemical Examiner or Assistant Chemical Examiner to Government ;
- (b) the Chief Inspector of Explosives ;
- (c) the Director of the Finger Print Bureau ;
- (d) the Director, Haffkeine Institute, Bombay ;
- (e) the Director [, Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory ;
- (f) the Serologist to the Government.

NOTES

More experts included in the section.—This section corresponds to section 510 of the old Code. The present section, however, also includes within its scope the following Government scientific experts, namely,—

- a. Director, Haffkeine Institute, Bombay.
- b. Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory.
- c. Deputy Directors and Assistant Directors of Central and State Forensic Science Laboratories (These two categories have been included by the Amendment Act, 1978).
- d. Serologist to the Government.

No formal proof of certain documents.

294. (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed :

Provided that the Court may, in its discretion, require such signature to be proved.

NOTES

Proof of documents.—This is a new section which provides for proof of documents. It lays down that documents, genuineness of which is not disputed, need not be proved. It requires each party to produce a list of documents and to admit or deny the genuineness of all or any of such documents filed by the opposite party. However, the Court may, in its discretion, require the genuineness of such documents to be proved.

Affidavit in proof of conduct of public servants.

295. When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

Evidence of formal character on affidavit.

296. (1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

NOTES

Sections 295 and 296 correspond respectively to sections 539A(1) and 510A of the old Code.

Object of sections 294 and 296.—Under section 294, a provision has been inserted for the avoidance of delay that where any document is filed before any Court by the prosecution or the accused, the contents thereof may be admitted by the other side and when such documents are admitted, genuineness of such documents should not be questioned thereafter. Section 296 should also be read in this connection. The underlying idea of these sections is to dispense with the requirement of formally proving some documents, as that formality may hamper the smooth flow of trial.

But documents like medical report and *panchanama* of scene of offence are too important to be admitted without proper proof. A doctor who has seen the injured and examined the fatal injuries, can give important medical evidence. The counsel for either side, if they agree to accept medical report without examining the doctor, would be considered remiss in their duties. So also the judge who tries the case and admits the medical report without examining the doctor. Similarly, the *panchanama* of the scene of offence should not also be accepted as evidence under section 294 unless the document is properly proved.—*Kalu Raghav v. State of Gujarat* 1976-77 Mah. Cr. 238.

Authorities before whom affidavits may be sworn.

297. (1) Affidavits to be used before any Court under this Code may be sworn or affirmed before—

- (a) any Judge or [any Judicial or Executive] Magistrate, or
- (b) any Commissioner of Oaths appointed by a High Court or Court of Session, or
- (c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

Previous conviction or acquittal how proved.

298. In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

- (a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was held, to be a copy of the sentence or order, or
- (b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was undergone, or by production of the warrant of commitment under which the punishment was suffered,

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Record of evidence in absence of accused.

299. (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try [*or commit for trial*,] such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

NOTES

Sections 298 and 299 correspond to sections 511 and 512 of the old Code respectively.

Present section 299 : Section 299, incorporates two modifications of old section 512 in order to make the provision comprehensive and to bring the wording of this section in conformity with that of section 33 of the Evidence Act, 1872, namely :

- a. In sub-section (1), the words “cannot be found” have been added after the words “if the deponent is dead or is incapable of giving evidence.”
- b. For the old word “attendance”, the word “presence” has been used.

Amendments in sections 297 and 299.—Sections 297 and 299 have been amended by the Amendment Act, 1978 as under :

- a. Under the new Code affidavits could be sworn in by a Judge or a Magistrate. To remove a doubt whether this would include Executive Magistrate, section 297 has been amended to clarify that the provision would cover Executive Magistrate also.
- b. Under section 299, evidence of witnesses can be recorded in the absence of the accused when he is absconding by the Trying Magistrate and not by the Committing Magistrate. The section has been amended to enable the Committing Magistrate also to exercise the function of recording evidence of witnesses, when the accused is absconding.

CHAPTER XXIV

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

Person once convicted or acquitted not to be tried for same offence.

300. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation : The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(c) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(d) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily

causing grievous hurt to B on the same facts, unless the case comes within sub-section (3) of this section.

(e) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may subsequently be charged with, and tried for, robbery on the same facts.

(f) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

NOTES

This section corresponds to section 403 of the old Code. While amending the provisions, the Joint Committee of Parliament observed as follows :

State Government's consent for new prosecution.—"The Committee is of opinion that where a person has been acquitted or convicted of any offence and a separate charge could have been but was not made against him in the former trial he should not be liable to be again prosecuted on the other charge as a matter of course because this might lend itself to abuse. To provide a check against such abuse, the Committee has provided in sub-clause (2) for the consent of the State Government before a new prosecution is launched on the basis of this provision.

The Committee has deleted original illustration (b) as it appeared to be misleading.

The other amendments made in the clause are of a consequential nature."

Appearance by Public Prosecutors.

301. (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs, a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

NOTES

This section corresponds to section 493 of the old Code. In the new section an express reference to the Assistant Public Prosecutor [see new section 25] besides the Public Prosecutor has been made. Regarding sub-section (2), the Joint Committee of Parliament observed :

Facility to a private pleader.—"The Committee considers that where a private person instructs a pleader as provided in sub-clause (2), such pleader should have the facility of submitting written arguments at the stage of the evidence with the permission of the Court. This is considered necessary because in some cases the complainant may have a feeling that the arguments of the Public Prosecutor or the Assistant Public Prosecutor require to be supplemented."

Permission to conduct prosecution.

302. (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector ; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission :

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

Right of person against whom proceedings are instituted to be defended.

303. Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

Legal aid to accused at State expense in certain cases.

304. (1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

- (a) the mode of selecting pleaders for defence under sub-section (1) ;
- (b) the facilities to be allowed to such pleaders by the Courts ;
- (c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.

Procedure when corporation or registered society is an accused.

305. (1) In this section, “corporation” means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused

shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court.

NOTES

Sections deal with general matters.—While sections 302 and 303 correspond respectively to sections 495 and 340(1) of the old Code, sections 304 and 305 are new. These sections deal with matters relating to permission to conduct prosecution, right of an accused to be defended by a pleader of his choice, legal aid to accused at State expense in certain cases and the procedure when corporation or registered society is an accused.

Under the old Code there was no adequate provision for appointment of a representative in respect of prosecutions against associations or corporations like societies, etc. A general provision has been made in this regard in section 305.

Tender of pardon to accomplice.

306. (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—

(a) his reasons for so doing ;

- (b) whether the tender was or was not accepted by the person to whom it was made,

and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub section (1) —

- (a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any ;
 (b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate ;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court ;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

NOTES

This section corresponds to section 337 of the old Code.

While examining the old section 337, the Law Commission in the 41st Report, analysed the provisions thereof as under :

Section 337 deals with the tender of pardon to an accomplice. Sub-section (1), which is the main provision and a lengthy and complicated one, lays down (i) the offences in respect of which pardon can be tendered ; (ii) the Courts which can tender pardon ; and (iii) the stage at which pardon can be tendered.

a. Analysis of old provision.—The offences in respect of which the power can be exercised fall in three groups, namely :

- i.* any offence triable exclusively by the High Court or Court of Session ;
- ii.* any offence punishable with imprisonment which may extend to seven years ; and
- iii.* any of the offences under eight specified sections of the Indian Penal Code.

b. The Magistrates who can tender pardon are District Magistrates, Presidency Magistrates, Sub-Divisional Magistrates and Magistrates of the first class.

c. Pardon can be tendered at any stage of (a) investigation into the offence ; (b) inquiry into the offence ; or (c) trial of the offence.

Under the proviso, however, where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate, can exercise the power unless he is the inquiring or trying Magistrate, and where the offence is under investigation no such Magistrate can exercise this power unless he has jurisdiction in the place where the offence might be inquired into or tried and sanction of the District Magistrate has been obtained. In other words, while the power of the District Magistrate is unlimited as regards the stage at which pardon can be tendered, any other first class magistrate can tender pardon—

- a. during investigation, only if he has territorial jurisdiction in regard to the offence *and* the sanction of the District Magistrate has been obtained, and
- b. during inquiry or trial, only if he is the inquiring or trying magistrate.

Section applicable to offences punishable with 7 years or more.—The question whether an offence under section 409 of the I.P.C., which is punishable with imprisonment for life or with imprisonment which may extend to 10 years and is triable by a Court of Session, a Presidency Magistrate or a Magistrate of the First Class, was an offence in respect of which pardon could be tendered under section 337 (as it stood before the amendment of 1955), was raised before the Supreme Court in the case of *State v. Ganeshwara Rao* AIR 1963 S.C. 1850. The Court held that, since the alternative punishment for the offence under the said section was imprisonment which may extend to 10 years, and since section 337 did not expressly say that the only punishment should be imprisonment which may extend to 7 years, the case was covered by section 337. Nonetheless the expression “any offence punishable with imprisonment which may extend to seven years” contained an ambiguity. Accordingly on the recommendation of the Law Commission, the words “or with a more severe sentence” have been added so as to include offences for which the maximum term of imprisonment prescribed in the Penal Code or other law is more than 7 years or imprisonment for life.

Section applies to offences triable by the Court of a Special Judge.—The new section also brings within its scope all offences which are triable exclusively by the court of a Special Judge appointed under the Criminal Law Amendment Act, 1952.

Magistrates competent to tender pardon.—The Magistrates competent to tender pardon under the new section are :

- a. Chief Judicial Magistrate or Metropolitan Magistrate, at any stage of the investigation, inquiry or trial, and
- b. Judicial Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial.

Reasons for tendering pardon etc. to be recovered.—It has also been provided that a clear record of not only the reasons for tendering pardon but also of the fact whether the tender was accepted or not would have to be kept. Now the accused will not have to pay for a copy of the record. It would be supplied to him on an application free of cost.

Approver's case also to be committed.—Under the new section, the Magistrate has not to scrutinise the evidence of the approver and that of the other witnesses produced by the prosecution. Even approver's case is required to be committed to the Court of Session if the offence is triable exclusively by that Court or if

the Magistrate taking cognizance is the Chief Judicial Magistrate, to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952, if the offence is triable exclusively by that Court, and in any other case, the Magistrate taking cognizance has to make over the case to the Chief Judicial Magistrate who is required to try the case himself.

Power to direct tender of pardon.

307. At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

NOTES

This section corresponds to section 338 of the old Code. It incorporates consequential changes arising out of the abolition of commitment proceedings.

Trial of person not complying with conditions of pardon.

308. (1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence :

Provided that such person shall not be tried jointly with any of the other accused :

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a Court under sub-section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made ; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall—

(a) if it is a Court of Session, before the charge is read out and explained to the accused ;

(b) if it is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

NOTES

Prosecution of approver for non-compliance with conditions of pardon.—This section corresponds to sections 339 and 339A of the old Code. It lays down the procedure for prosecuting a person who, after accepting a pardon tendered under section 306 or section 307, fails to comply with the condition on which the pardon was made.

Power to postpone or adjourn proceedings.

309. (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody :

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time :

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing :

[Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]

Explanation 1 : If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2 : The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

NOTES

This section corresponds to section 344 of the old Code. The following changes have been made in the old section :

- a. it has been clarified that remands under sub-section (1A) [new sub-section (2)] can only be given after cognizance has been taken of the offence and not at the stage of investigation ;
- b. pointed attention of the Courts has been drawn to the fact that power to impose "terms" for adjournment would include power to direct payment of costs, in appropriate cases, for adjournment. This specific provision is intended to discourage unnecessary adjournments whether sought by the prosecution or defence.

Power of remand.—Under section 309(2), the Court gets the power of remanding the accused to custody only after taking cognizance of the offence. *Explanation 1* to section 309(2) cannot be invoked for remanding the accused to custody when the court has not taken cognizance of the offence—[*Mohd. Shafi v. State* 1975 Cr. LJ 1309]. The Magistrate can by a warrant remand the accused in custody under sub section (2) of section 309 only if the police report is filed before him within 60 days from the date of arrest of the accused.

The words 'in custody' may reasonably be construed to mean custody authorised by law or in pursuance of a valid order directing detention of an accused person. If the custody or detention of a person is illegal, and if the person in custody is entitled to be released on bail immediately before taking cognizance of an offence by a magistrate on police report and is ready to furnish bail, he cannot be recommitted to custody under section 309(2)—*Khinvdan v. State of Rajasthan* 1975 Cr. LJ 1984.

Although the expression 'reasonable cause' occurring in sub-section (1A) of section 344 of the old Code is not to be found in section 309 of the new Code, the *Explanation* to section 344 of the old Code has been retained as *Explanation 1* to section 309 in identical language. The law as engrafted in proviso (a) to section 167(2) and section 309(2) of the new Code confers powers of remand to jail custody during the pendency of the investigation only under the former and not under the latter. Section 309(2) is attracted only after cognizance of an offence has been taken or trial has commenced—*Natabar Parida v. State of Orissa* AIR 1975 SC 1465.

Amendment—Adjournment not to be granted.—The new Code provides for an opportunity to an accused person to show cause against the proposed sentence. As this should not lead to delay, section 309(2) has been amended by the Amendment Act, 1978 to clarify that adjournment shall not be granted **only** for the purpose of enabling the accused to show cause against the **proposed** sentence.

Local inspection.

310. (1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost.

NOTES

Furnishing copy of inspection memorandum.—This section corresponds to section 539B of the old Code. Proviso to old sub-section (2) which related to jury trial has been omitted. On the suggestion of the Joint Committee of Parliament, it has been provided that a copy of the memorandum of facts observed at a local inspection has to be furnished, if so desired, not only to the prosecutor, complainant or accused but to “any other party to the case”.

Power to summon material witness, or examine person present.

311. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined ; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

Expenses of complainants and witnesses.

312. Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

NOTES

Sections 311 and 312 correspond to sections 540 and 544 of the old Code respectively without any change in the old provisions.

Power to examine the accused.

313. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—

- (a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary ;
- (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case :

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

NOTES

This section corresponds to section 342 of the old Code.

“In every inquiry or trial” — connotation of.—In sub-section (1) of that section, the words “In every inquiry or trial” have been inserted at the beginning to make it clear that (i) the provisions of the section apply to all inquiries and trials ; (ii) in summons cases where the personal attendance of the accused has been dispensed with, the Court has power to dispense with his examination ; and (iii) in other cases, even where his personal attendance has been dispensed with, the accused has to be examined personally. The words ‘the Court may draw such inference from such answers as it thinks just’ have been omitted from old sub-section (2), as this aspect of the matter is now covered by sub-section (3).

Examination of accused when dispensed with.—Examination of accused is a must except where the accused is tried in a summons case and his personal attendance is dispensed with for which the court is empowered—*Raja Dhanrajgirji Chela v. Dherwanir* [1975] 2 AP LJ 217.

Oral arguments and memorandum of arguments.

314. (1) Any party to a proceeding may, as soon as may be, after the close of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the Court setting forth concisely and under distinct headings, the arguments in support of his case and every such memorandum shall form part of the record.

(2) A copy of every such memorandum shall be simultaneously furnished to the opposite party.

(3) No adjournment of the proceedings shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(4) The Court may, if it is of opinion that the oral arguments are not concise or relevant, regulate such arguments.

NOTES

This is a new section. It has been considered necessary and desirable to make a specific provision enabling parties to file written arguments.

Right to address orally a statutory right.—Further, generally the right to address oral arguments is given to the parties, but the Joint Committee of Parliament has considered it necessary to include this right specifically in the section. In view of the right to address oral arguments having been made a statutory right, the Court has been authorised to regulate the oral arguments if it is of the opinion that the oral arguments are not concise or relevant.

Accused person to be competent witness.

315. (1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial :

Provided that—

- (a) he shall not be called as a witness except on his own request in writing ;
- (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

(2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107, or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings :

Provided that in proceedings under section 108, section 109 or section 110, the failure of such person to give evidence shall not be made the subject or any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.

No influence to be used to induce disclosure.

316. Except as provided in sections 306 and 307, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

NOTES

Sections 315 and 316 correspond to sections 342A and 343 of the old Code respectively without any change in the old provisions.

Provision for inquiries and trial being held in the absence of accused in certain cases.

317. (1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

NOTES

This section corresponds to section 540A of the old Code.

Proceedings in absence of accused.—The scope of the section has been extended to enable the proceedings to be conducted in the absence of an accused person if he persistently disturbs the proceedings.

Procedure where accused does not understand proceedings.

318. If the accused, though not of unsound mind, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial ; and, in the case of a Court other than a High Court, if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

NOTES

This section corresponds to section 341 of the old Code without any change.

Power to proceed against other persons appearing to be guilty of offence.

319. (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witness re-heard ;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

NOTES

Summoning newly added accused.—This section corresponds to section 351 of the old Code.

The old section provided that if the Court, hearing a case against certain accused, found from the evidence that some person, other than the accused, was also concerned in that very offence or in a connected offence, the Court could detain such person and join him in the proceedings. But this could have been done only if such person happened to be attending the Court and not otherwise. There was no express provision for summoning such a person if he was not present in Court. This has now been provided for in the new section. Besides this, it has been provided that (i) the cognizance against the newly added accused should be taken in the same manner as against the other accused, and (ii) the offence for which newly added accused can be tried should be connected with the one for which the original accused is under trial.

Scope of section.—This section deals with cases of persons whose names are not mentioned either in the FIR or in the statements recorded under section 161.

This section does not deal with the cases of the accused persons whom the police officers have found to be not guilty of the offence for which they were charged ; their cases are dealt with under sections 169 and 173—*Garib Dass v. State of Punjab* [1976] 78 Punj. LR 71.

Court of Sessions cannot take direct cognizance.—Though a plain reading of section 319 may show that the Sessions Court may add a person directly during trial against whom there is evidence, it cannot take direct cognizance of an offence as the Sessions Court has no original jurisdiction. See section 193—*Patananchala China Lingaiah v. State* 1977 Cr. LJ 415.

Compounding of offences.

320. (1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table :—

TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt.	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force.	352, 355 358	The person assaulted or to whom criminal force is used.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass.	447	The person in possession of the property trespassed upon.
House trespass.	448	Ditto.
Criminal breach of contract of service.	491	The person with whom the offender has contracted.
Adultery.	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	Ditto.
[Defamation, except such cases as are specified against section 500 of the Indian Penal Code in column 1 of the Table under sub-section (2)]	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	501	Ditto.
Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter.	502	Ditto.

1	2	3
Insult intended to provoke a breach of the peace.	504	The person insulted
Criminal intimidation except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table :—

TABLE

<i>Offence</i>	<i>Section of the Indian Penal Code applicable</i>	<i>Persons by whom offence may be compounded</i>
1	2	3
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto.
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining for ten or more days.	344	Ditto.
Wrongfully confining a person in secret.	346	Ditto.
Assault or criminal force to woman with intent to outrage her modesty.	354	The woman assaulted to whom the criminal force was used.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Theft, where the value of property stolen does not exceed two hundred and fifty rupees.	379	The owner of the property stolen.

1	2	3
Theft by clerk or servant of property in possession of master, where the value of the property stolen does not exceed two hundred and fifty rupees.	381	The owner of the property stolen.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Criminal breach of trust, where the value of the property does not exceed two hundred and fifty rupees.	406	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a carrier, wharfinger etc., where the value of the property does not exceed two hundred and fifty rupees.	407	Ditto.
Criminal breach of trust by a clerk or servant, where the value of the property does not exceed two hundred and fifty rupees.	408	Ditto.
Dishonestly receiving stolen property, knowing it to be stolen, when the value of the stolen property does not exceed two hundred and fifty rupees.	411	The owner of the property stolen.]
Assisting in the concealment or disposal of stolen property, knowing it to be stolen, where the value of the stolen property does not exceed two hundred and fifty rupees.	414	Ditto.
Cheating.	417	The person cheated.
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	418	Ditto.
Cheating by personation.	419	Ditto.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.
Mischief by killing or maiming animal of the value of ten rupees or upwards.	428	The owner of the animal.
Mischief by killing or maiming cattle, etc., of any value or any other animal of the value of fifty rupees or upwards.	429	The owner of the cattle or animal.

1	2	3
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark.	486	Ditto.
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	500	The person defamed.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it was intended to insult or whose privacy was intruded upon.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence when such attempt is itself an offence) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908), of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

NOTES

Modifications in the old provision by new Code.—This section corresponds to section 345 of the old Code, with the following changes :

- a. Offence under sections 354, 411 and 414 of the I.P.C. (if the value of property does not exceed Rs. 250) have been made compoundable with the permission of the Court.
- b. Offences of unlawful compulsory labour under section 374 of the I.P.C. has been excluded from the list of compoundable offences.
- c. A person liable to enhanced punishment by reason of a previous conviction cannot be allowed to compound an offence.
- d. Specific provision has been made in respect of compounding of offences by the legal representatives of persons who are dead.

Compounding of offences without Court's permission.—The Amendment Act, 1978 has amended the Table under sub-section (1) to provide that only those cases of defamation may be compounded without the permission of the Court as are not mentioned against section 500 of the Indian Penal Code, in column 1 of the Table under sub-section (2) of this section.

Withdrawal from prosecution.

321. The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried ; and, upon such withdrawal,—

- (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences ;
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences :

Provided that where such offence—

- (i) was against any law relating to a matter to which the executive power of the Union extends, or
- (ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or
- (iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

NOTES

Consent of Central Government in certain cases.—This section corresponds to section 494 of the old Code. On the recommendation of the Law Commission, a provision has been made in the section that consent of the Central Government has to be obtained before a Public Prosecutor or Assistant Public Prosecutor in charge of the case moves the Court for the withdrawal of the case if the offence relates to a matter to which the executive power of the Union extends or was investigated by the Special Police Establishment or involves misappropriation, destruction or damage to Central Government property or is committed by a Central Government servant.

Withdrawal request not to be accepted as a formality.—In *Bansi Lal v. Chandan Lal* AIR 1976 SC 370, the Supreme Court has observed that the request to grant permission under section 321 should not be accepted “as a necessary formality”, “for the mere asking” but the Court must be satisfied “on the materials placed before it” that the grant of permission would serve the administration of justice and that “permission was not being sought overtly with an ulterior purpose unconnected with the vindication of the law which the executive organs are in duty bound to further and maintain.

Withdrawal of prosecution, discretion of public prosecutor only.—The statutory responsibility for deciding upon withdrawal squarely vests in the public prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above him on the administrative side. The Criminal Procedure Code is the only master of the public prosecutor and he has to guide himself with reference to the Code only. So guided, the consideration which must weigh with him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution. It is not proper for a District Magistrate to order the public prosecutor to move for withdrawal. It may be open to the District Magistrate to bring to the notice of the public prosecutor materials and suggest to him to consider whether the prosecution should be withdrawn or not. He cannot command where he can only commend. It is entirely within the discretion of the public prosecutor to withdraw or not to withdraw. If he comes to the conclusion, on the materials passed on to him, that the case deserves to be withdrawn, he may initiate action in that behalf.

Justice ordinarily demands that every case must reach its destination, not interrupted *en route*. If some policy consideration bearing on the administration of justice justifies withdrawal, the court may accord permission; not if no public policy bearing on the administration of justice is involved. The court has to be vigilant when a case has been pending before it and not succumb to executive suggestion made in the form of application for withdrawal with a bunch of papers tacked on—*Balwant Singh v. State of Bihar* AIR 1977 SC 2265.

Procedure in cases which Magistrate cannot dispose of.

322. (1) If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption—

- (a) that he has no jurisdiction to try the case or commit it for trial, or
- (b) that the case is one which should be tried or committed for trial by some other Magistrate in the district, or
- (c) that the case should be tried by the Chief Judicial Magistrate,

he shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

NOTES

Submission of case to CJM for lack of jurisdiction.—This section corresponds to section 346 of the old Code. The new section makes it clear that “lack of jurisdiction” is one of the reasons for submitting the case by a Magistrate to the Chief Judicial Magistrate, or under his direction, to any other competent Magistrate for being tried by him.

Subordinate Magistrate to refer cases to CJM.—Further, under the old section, there was no provision empowering a subordinate Magistrate to refer cases to the Chief Judicial Magistrate before or during trial, in case such a Magistrate found that he could not dispose of the case but it could be disposed of by the Chief Judicial Magistrate, e.g., a case relating to an offence punishable with imprisonment for a term that may extend to 7 years. Such a provision has now been made in order to reduce the work load of the Sessions Court.

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

323. If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained [and thereupon the provisions of Chapter XVIII shall apply to the commitment so made].

NOTES

Old section formally revised.—This section corresponds to section 347 of the old Code. As all Magistrates are competent to commit a case to the Court of Session the old section has been formally revised.

Amendment.—It has been clarified by the Amendment Act, 1978 that where commitment is made by a Magistrate after Inquiry and trial, the procedure specified in Chapter XVIII relating to trial before a court of session shall apply to the commitment so made.

Trial of persons previously convicted of offences against coinage, stamp-law or property.

324. (1) Where a person, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code (45 of 1860) with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, and the Magistrate before whom the case is pending is satisfied that there is ground for presuming that such person has committed the offence, he shall be sent for trial to the Chief Judicial Magistrate or committed to the Court of Session, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted.

(2) When any person is sent for trial to the Chief Judicial Magistrate or committed to the Court of Session under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly sent or committed, unless the Magistrate discharges such other person under section 239 or section 245, as the case may be.

NOTES

Old section formally revised. — This section corresponds to section 348 of the old Code. The old section has formally been revised but no change of substance has been made therein.

Procedure when Magistrate cannot pass sentence sufficiently severe.

325. (1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.

NOTES

Transfer of case due to insufficiency of sentencing power.—This section corresponds to section 349 of the old Code. Under the section the provision, dealing with the transfer of a case pending before a Second or Third Class Magistrate if he thinks that the accused is guilty and merits punishment which the Magistrate is not competent to impose, has been extended to convictions before First Class Magistrates also so that they can report the case to the Chief Judicial

Magistrates, who have higher powers of sentencing. Under the *old* section this was not possible, both because the Magistrates of the First Class were not mentioned in sub-section (1) thereof, and because the proviso to sub-section (2) of that section restricted the sentencing powers of the Magistrate to whom the case was forwarded. Accordingly, the provisions of sub-section (1) of the old section 349 have been revised and the proviso to sub-section (2) thereof omitted.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

326. (1) Whenever any [*Judge or Magistrate*], after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another [*Judge or Magistrate*] who has and who exercises such jurisdiction, the [*Judge or Magistrate*] so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself :

Provided that if the succeeding [*Judge or Magistrate*] is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code [*from one Judge to another Judge or*] from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325.

NOTES

Applicability of section.—This section corresponds to section 350 of the old Code. This section does away with the exceptions which were contained in sub-section (2) of the old section. Now this section would be applicable also to cases in which proceedings have been stayed under section 322 (section 346 old) and to cases in which proceedings have been submitted to a superior Magistrate under section 325 (section 349 old).

Amendment.—Under the provisions of this section as it stood before the Amendment Act, 1978, a *de novo* trial was not obligatory when there was a change of Magistrate. The Amendment Act, 1978 has extended the scope of this section to the Court of Session also to expedite trial of cases therein.

Court to be open.

327. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public

generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

NOTES

Section contains healthy rule.—This section corresponds to section 352 of the old Code and contains the healthy rule that Criminal Courts should ordinarily be open to the public.

CHAPTER XXV

PROVISIONS AS TO ACCUSED PERSONS OF UNSOUND MIND

Procedure in case of accused being lunatic.

328. (1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.

(3) If such Magistrate is of opinion that the person referred to in subsection (1) is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case.

NOTES

Procedure when accused of unsound mind.—This section corresponds to section 464 of the old Code. The old provision has been redrafted for the purpose of laying down procedure in any inquiry against an accused who appears to be of unsound mind.

Procedure in case of person of unsound mind tried before court.

329. (1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.

NOTES

Fact of unsoundness of mind to be tried first.—This section corresponds to section 465 of the old Code. Apart from the fact that references to

“commitment”, “High Court” and “jury” occurring in the old section have been omitted, there is also a drafting improvement upon the old provision “to make it clear that in a trial before a Magistrate or Court of Session if the accused appears to be of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness of mind and incapacity; and if the Magistrate or Court is satisfied as to the unsoundness of mind or incapacity of the accused, he or it shall record a finding to that effect and shall postpone further proceedings in the case”.

Release of lunatic pending investigation or trial.

330. (1) Whenever, a person is found, under section 328 or section 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government :

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

Resumption of inquiry or trial.

331. (1) Whenever an inquiry or a trial is postponed under section 328 or section 329, the Magistrate or Court, as the case may be, may at any time after the person concerned has ceased to be of unsound mind resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Procedure on accused appearing before Magistrate or Court.

332. (1) If, when the accused appears or is again brought before the Magistrate or Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall act according to the provisions of section 328 or section 329, as the case may be, and if the accused is found to be of unsound mind and consequently incapable of making his

defence, shall deal with such accused in accordance with the provisions of section 330.

When accused appears to have been of sound mind.

333. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act, which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be tried by the Court of Session, commit him for trial before the Court of Sessions.

Judgment of acquittal on ground of unsoundness of mind.

334. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

NOTES

Sections 330 to 334 correspond to sections 466 to 470 of the old Code, respectively. No change of substance has been made in the old provisions contained in those sections.

Person acquitted on such ground to be detained in safe custody.

335. (1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence,—

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit ; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section (1), except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person ;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub-section (1).

NOTES

Court's discretion to order delivery of an insane person to his friends or relations.—This section corresponds to section 471(1) of the old Code. Clause (b) of sub-section (1) and sub-section (3) of this section are new. Under old section 471, when a person was acquitted on the ground that he was insane at the time of the commission of the offence, the Court had to order him to be detained and it was only the State Government which could order the delivery of the convicted person to the relatives. The new provision, however, gives the court a discretion to order the delivery of such a person to his friends or relatives on their executing a bond with suitable conditions. The genesis of this provision is best explained by the Law Commission as follows :

'Detained' implication of.—"An order of the Court delivering the accused to the custody of his relatives appears to be illegal [*Superintendent and Legal Remembrancer v. Srish Chandra* AIR 1928 Cal. 653 and *Public Prosecutor v. Kandaswami* AIR 1953 Mad. 355] as the law stands at present. The contrary view taken in an earlier case, *A.B. Mahammad v. Emp.* AIR 1922 Mad. 54] was based on the language of the section as it stood then, where the word "kept" was used. The word now used is "detained" and implies curtailment of liberty—*Public Prosecutor v. Nallyyappa* AIR 1948 Mad. 291.

Delivery of convicted person.—It has been suggested that if the person found guilty is sane at the time of acquittal, his friends and relatives should be allowed to keep him, after executing a bond with suitable conclusion for keeping the peace for five years thereafter. Delivery of the convicted person to the relatives is a matter which can, at present, be dealt with under section 475 by the State Government only. The Court can, no doubt, state in its report, that it will be safe to release the accused—*Provisional Government v. Krishna Gopal Marathe* AIR 1945 Nag. 77. But even if the accused is sane throughout the trial, he cannot be released under section 471.

Recommendation of English Committee.—In England, the Criminal Law Revision Committee,¹ while observing that the Home Office is in a better position than a Court to investigate questions relating to treatment of the accused, and that in such matters uniformity of practice was desirable, nevertheless recommended that in both cases, *i.e.*, when there is a "special verdict" (guilty but insane), and when there is a finding of unfitness to plead, the Court should have a discretion not to make an order for detention if it considers on medical evidence that it is safe for the public to order the immediate release of the accused.

Custody of insane to his relative or friend favoured.—We feel that the recommendations of the English Committee are applicable to Indian conditions also. At least, the mandatory provision in section 471 should be replaced by a provision which would leave some discretion to the Court. The primary object of the detention order under section 471 is rehabilitation of the accused (now acquitted) and to prevent any trouble if he should relapse into insanity. It cannot be denied that the accused will receive more personal

1. Criminal Law Revision Committee, Third Report. "Criminal Procedure (Insanity)" Cmd, 2149 pp. 13-14.

attention and care from his own relatives and friends than in a public lunatic asylum ; and where his relatives or friends are ready to look after him and also undertake to ensure that he causes no injury to himself or others, there seems no reason why the accused should not be released to their custody. It can, no doubt, be said in favour of the present provision that if it is found after observation in the hospital that the person concerned is not a danger to others, he would be released under section 475. Even then, there should be no objection to a discretion being given to the Court."

Power of State Government to empower officer incharge to discharge.

336. The State Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 330 or section 335 to discharge all or any of the functions of the Inspector-General of Prisons under section 337 or section 338.

Procedure where lunatic prisoner is reported capable of making his defence.

337. If such person is detained under the provisions of sub-section (2) of section 330, and in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 332 ; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic detained is declared fit to be released.

338. (1) If such person is detained under the provisions of sub-section (2) of section 330, or section 335, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the State Government may thereupon order him to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum ; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make a formal inquiry into the state of mind of such person, take such evidence as is necessary, and shall report to the State Government, which may order his release or detention as it thinks fit.

Delivery of lunatic to care of relative or friend.

339. (1) Whenever any relative or friend of any person detained under the provisions of section 330 or section 335 desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall—

- (a) be properly taken care of and prevented from doing injury to himself or to any other person ;

- (b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct ;
- (c) in the case of a person detained under sub-section (2) of section 330, be produced when required before such Magistrate or Court,

order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub-section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court ; and, upon such production the Magistrate or Court shall proceed in accordance with the provisions of section 332, and the certificate of the inspecting officer shall be receivable as evidence.

NOTES

Sections 336 to 339 correspond to and repeat in substance the provisions contained in sections 471(2), 473 to 475 of the old Code, respectively.

CHAPTER XXVI

PROVISIONS AS TO OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

Procedure in cases mentioned in section 195.

340. When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

- (a) record a finding to that effect ;
- (b) make a complaint thereof in writing ;
- (c) send it to a Magistrate of the first class having jurisdiction ;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate ; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such

former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint ;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, “Court” has the same meaning as in section 195.

NOTES

Section complementary to section 195.—This section incorporates the provisions contained in sections 476(1) and 476A of the old Code. Section 340 is intended to be complementary to section 195. The scope of the former sections should, therefore, be the same as that of the latter section. In the old sections 195 and 476, there was a discrepancy in the wording, giving rise to some controversy about the scope of old section 476 as well as about the question whether the presiding officer of the Court could make a complaint under old section 476, in cases not strictly falling within section 195. Section 340 has, therefore, been drafted to emphasise in sub-section (1) that the section applied only to the offences to which clause (b) of section 195(1) applied. It also, incidentally, covers abetment of those offences, since section 195(1)(b) applies to them also.

Use of expression “Court” in the section.—The old section 476 spoke of “a civil, revenue or criminal Court” while section 195 (old) used the expression “Court” and defined it. Section 340 now uses the word “Court” only and makes it clear in sub-section (4) that the word has the same meaning as in section 195.

Requisite conditions for laying a complaint under the section.—An order of the High Court made under section 340(1) or (2) is specifically excluded for the purpose of appeal to the superior court under section 341(1). Under the old section, there was a right of appeal from the order of a subordinate court to the superior court to which appeals ordinarily lay from an appealable decree or sentence of such former court.

Whether, *suo moto* or on an application by a party, a court being already seized of a matter under section 340(1) may be tentatively of opinion that further action against some party or witness may be necessary in the interest of justice. In such a proceeding, the reasons recorded in the principal case in which a false statement has been made, have a great bearing and indeed action as taken having regard to the overall opinion formed by the court in the earlier proceedings. In an enquiry under section 340(1) the only question is whether a *prima facie* case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action. The enquiry under section 340(1) is really in the nature of affording a *locus paenitentiae* to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence.

In this case there was a complaint in respect of offence under section 193 of Indian Penal Code (giving false affidavit) against the Home Minister of Kerala.

The High Court, after enquiry, sanctioned complaint for perjury. The Supreme Court, on a Special Leave appeal to it under Article 136 of the Constitution refusing to interfere with the order of the High Court observed :

“... it will not be expedient in the interest of justice to interfere with the High Court unless we are absolutely certain that the two preconditions which are necessary for laying a complaint under section 340 are completely absent. The two pre-conditions are that the materials produced before the High Court make out a *prima facie* case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under section 193 of Indian Penal Code—*K. Karunakaran v. T.V. Eachara Warriar* AIR 1978 SC 290.

Appeal.

341. (1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

NOTES

High Court excluded from scope of section.—This section corresponds to section 476B of the old Code. The (new) section makes two important changes in the old provision.

It was held by the Supreme Court in *M.S. Sheriff* [AIR 1954 SC 397] that an appeal lay under old section 476B to the Supreme Court from an order of a Division Bench of a High Court directing making of a complaint under section 476 (old). The Law Commission recommended that the position should be altered by excluding the High Court from the scope of section 476B, because so far as the High Court was concerned, there was no need for an independent right of appeal against its decision to make a complaint. Following this recommendation, therefore, the words “other than a High Court” have been interposed in sub-section (1) of section 341.

Order under sub-section (2) final.—Sub-section (2) is a new provision, the reason for which has been explained by the Law Commission thus :

“Orders under sections 476, 476A and 476B are, at present, regarded as subject to revision. In our view, the right of appeal conferred by section 476B is enough, and there should be no further proceeding by way of revision against such orders. An order under section 476 or under section 476A should be final, subject to the appeal provided for by section 476B ; and an order under section 476B should be final, being itself an order passed on appeal. It is also necessary to set at rest the controversy as to whether the provisions of the Code of Civil Procedure or of the Code of Criminal Procedure will apply where the order of a Civil Court passed under section 476 is challenged in revision.”

Power to order costs.

342. Any Court dealing with an application made to it for filing a complaint under section 340 or an appeal under section 341, shall have power to make such order as to costs as may be just.

NOTES

Provision based on Bombay Amendment.—This new provision conferring power to award costs in proceedings under sections 340 and 341 has been adopted with a few modifications from section 476C inserted by Bombay Act 46 of 1948. The Bombay Amendment read as follows :

“A Criminal Court dealing with an application made to it for filing a complaint under section 476 or section 476A, and a Court dealing with an appeal under section 476B and the High Court dealing with an application in revision shall have power to make such order as to costs as may be just :

Provided that no such order shall be made against the Government or any public servant acting on behalf of the Government.”

Procedure of Magistrate taking cognizance.

343. (1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

NOTES

Complaint to be dealt with as if instituted on police report.—This section incorporates the provisions contained in sub-sections (2) and (3) of section 476 of the old Code. There is only one difference in the new and old provisions. It relates to the manner of dealing with the complaints made under sections 340 and 341. Under the old law, in the case of offences like perjury, forgery, disobedience of orders of Court or other types of contempt of Court, the Court had to make an inquiry under section 476 before filing a complaint. In that case, the Magistrate had to follow the procedure prescribed for making complaints and then hold an inquiry. It was, however, considered desirable that the inquiry by the Magistrate might be dispensed with when the complaint was made by a Court after an inquiry under section 476 (now section 340). Hence the new provision, departing from the old provision, requires that the complaint should be dealt with as if it is instituted on a police report.

The Law Commission did not favour this departure ; but it was suggested to the Law Commission that “since a complaint is made under section 476 by a responsible judicial officer (and after inquiry in most cases), the Court to which the complaint is made need not and should not hold another inquiry but should issue process and that when a superior court has made a complaint, it was inappropriate that a Magistrate should again hold an inquiry or dismiss it”. This

suggestion appears to have weighed more with the law-makers than the views of the Law Commission in the matter. Hence the present sub-section (2) of section 343.

Old sections 478 & 479 omitted.—Incidentally, old sections 478 and 479 which dealt with commitment by civil courts have been omitted since those sections were rarely resorted to. In any case, the civil court can make a complaint to the Magistrate even where the offence is triable exclusively by the Court of Session.

Summary procedure for trial for giving false evidence.

344. (1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

NOTES

Object of old section 479A inserted in 1955.—Section 344 replaces section 479A of the old Code. The latter section was inserted in the Code in 1955 with the object of “eradicating the evils of perjury”. It, however, did not have the desired effect. The Law Commission observed :

“Ever since its introduction the section has been a source of trouble. First, there was a controversy as to whether it was exclusive of section 476 or merely provided an additional alternative. That the former is the correct view is now well-settled. But the main question which naturally arises is whether this section makes an improvement over section 476. If speedy punishment of perjury is the aim, then the section does not go far enough because though it bars an appeal against a complaint made by the court it does not give power to the court itself to punish perjury.”

Defect in the old section 479A.—“Moreover, action under the section cannot be taken after judgment is pronounced. Where a complaint “can be” made under the section, action cannot be taken under section 476, so that if the court, by reason of forgetfulness or insufficient material, does not make a complaint on the termination of the proceedings, action cannot be subsequently taken under section 476 and the offender escapes unpunished—a result hardly intended by the legislature. This is a positive harm done by this section.”

Summary punishment for perjury favoured.—At the same time, the Law Commission observed :

“A mere repeal of the section, however, without some provision for punishing perjury will not be a satisfactory solution. Some provision whereby perjury of a flagrant and unchallengeable type could be effectively punished summarily without seriously prejudicing a fair trial of the person concerned, is desirable.”

Salient features of the new provision.—The salient features of the new section are therefore as follows :

1. A Court of Session or a Magistrate of the first class (as against Civil, Revenue or Criminal Court mentioned in the old section) has been empowered itself to try and punish summarily the offence of perjury if the Court is satisfied that it is necessary and expedient so to do in the interests of justice *instead of* filing a complaint before a Magistrate as was the case under the old provision.
2. As in the old provision, the time for exercising the power under the section is at the time of the delivery of judgment or final order. The Joint Committee of Parliament observed :

“The Committee is of the view that the Court should not be enabled to exercise this power at any time during the proceedings, because this may put witnesses in terror and may not conduce to the smooth progress of the inquiry or the trial. The appropriate thing would be to have the matter considered by the court only at the time of the delivery of Judgment or final order for it is only then that he will be in a position to assess the significance of the statements in the proper light.”
3. Before the punishment is imposed, the offender has to be given a reasonable opportunity of showing cause why he should not be punished for such offence.
4. The maximum punishment laid down is three month's imprisonment or fine up to Rs. 500 or both.
5. The Court's order has been made appealable [*see* section 351] “as a check against arbitrary action” under the section. Under the old provision, the finding of the Court was non-appealable.
6. The new procedure will be without prejudice to action under section 340.
7. The sentence imposed under the section should not be executed until the disposal of an appeal or revision against the judgment or order in the main proceedings in which the witness gave perjured evidence and was sentenced. The Joint Committee of Parliament observed : “If this is not done the witness should have suffered the punishment even though ultimately, as a result of the appeal or revision, the statements made by him would be found to have been justified”.

On this new procedure, the Law Commission observed :

"We are not aware of the risk involved in giving power to punish perjury to the very court before which it is committed..... The provision which we recommend is of a very limited character, being confined to obvious cases of perjury and authorising a small punishment. Even this procedure will be discretionary, so that where the Court is of opinion that perjury, even though committed by contradictory statements on oath, is likely to raise complicated question, or deserves more serious punishment than that permissible under the proposed section, or is otherwise of such a nature that the ordinary procedure [section 340] is more appropriate, the court will not proceed under the proposed section."

Procedure in certain cases of contempt.

345. (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Procedure where Court considers that case should not be dealt with under section 345.

346. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 345, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

NOTES

Contempt ex facie curiae.—Sections 345 and 346, which prescribe the procedure for punishing contempt when committed *ex facie curiae* correspond to sections

480 to 482 of the old Code. In section 345(1) a provision has been made for giving the offender a reasonable opportunity of showing cause why he should not be punished. This is, as observed by the Joint Committee of Parliament, to secure "that the principles of natural justice should be followed in cases of contempt mentioned therein."

Case to be dealt with as if instituted on police report.—Section 346(2) provides that the Magistrate has to deal with the cases under section 346, as if it were instituted on a police report. The old section had provided for a complaint procedure. Regarding this departure, the Joint Committee of Parliament observed : "The Committee feels that the procedure prescribed for private complaints would not be appropriate in contempt cases mentioned in the preceding clause and so the procedure applicable to a case initiated on a police report has been prescribed."

When Registrar or Sub-Registrar to be deemed a Civil Court.

347. When the State Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1908 (16 of 1908) shall be deemed to be a Civil Court within the meaning of sections 345 and 346.

Discharge of offender on submission of apology.

348. When any Court has under section 345 adjudged an offender to punishment, or has under section 346 forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

NOTES

Sections 347 and 348 are the same as sections 483 and 484 of the old Code, respectively. No change has been made in the old provisions.

Imprisonment or committal of person refusing to answer or produce document.

349. If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346.

NOTES

Principle of natural justice to be followed.—This section is practically the same as section 485 of the old Code. The section makes it clear that the offender has to be given a reasonable opportunity to offer an excuse for refusal, so that, as

observed by the Joint Committee of Parliament, "the principles of natural justice are not ignored in cases mentioned therein".

No reference to Court established by Royal Charter.—The words "and in the case of a Court established by Royal Charter shall be deemed to be guilty of contempt" occurring at the end of the old section 485 have also been omitted as "the power of a State High Court to punish for contempt is governed by article 215 of the Constitution and need not be provided for again in this section".

Summary procedure for punishment for non-attendance by a witness in obedience to summons.

350. (1) If any witness being summoned to appear before a criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

NOTES

Old section amended to conform to sections 263 and 264.—This section is almost the same as section 485A of the old Code. Sub-section (2) of old section 485A was :

"In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials *in which an appeal lies.*"

The words "in which an appeal lies" have now been omitted in view of the doing away with the artificial distinction between non-appealable and appealable summary cases [See sections 263 and 264].

Appeals from convictions under sections 344, 345, 349 and 350.

351. (1) Any person sentenced by any Court other than a High Court under section 344, section 345, section 349, or section 350 may, notwithstanding anything contained in this Code appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXIX shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any Registrar or Sub-Registrar deemed to be a Civil Court by virtue of a direction issued under section 347 shall lie to the Court of Session for the sessions division within which the office of such Registrar or Sub-Registrar is situate.

Certain Judges and Magistrates not to try certain offences when committed before themselves.

352. Except as provided in sections 344, 345, 349 and 350, no Judge of a Criminal Court (other than a Judge of a High Court) or Magistrate shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

NOTES

Modifications in old provisions.—Sections 351 and 352 correspond to sections 486 and 487 of the old Code respectively, with the following important changes :—

1. In sub-section (1) of section 351, the words “other than a High Court” are intended to exclude High Courts.
2. Appeals from all the authorities (Court of Small Causes, Court of Registrar or Sub-Registrar) will lie to the Court of Session, instead of High Court as was provided for in certain cases in old sub-sections (3) and (4) of section 479A.
3. In section 352, a reference to (new) section 344 has been added.
4. Old sub-section (2) of section 487 has been omitted in view of the abolition of commitment proceedings.

CHAPTER XXVII

THE JUDGMENT

Judgment.

353. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, —

(a) by delivering the whole of the judgment ; or

(b) by reading out the whole of the judgment ; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted :

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465.

NOTES

This section combines and re-arranges the provisions contained in sections 366 and 367(1) of the old Code. The changes made in those sections by the present (new) section are indicated below :

Three modes of pronouncing judgment—Sub-section (1).—The three modes of pronouncing a judgment as contained in sections 366 and 367 of the old Code have been brought under this sub-section. Clause (c) of this sub-section clarifies that when the judgment is pronounced by explaining the substance of it, the operative part of the judgment should be read out.

Dating and signing of judgments dictated in Court—Sub-section (2).—Old section 367(1) required that the judgment should be dated and signed at the time of pronouncing it. This requirement could not be complied with where the judgment was pronounced by dictating in open Court. Transcribing a dictated judgment naturally took time. It could be signed only when the transcript was ready. This sub-section, therefore, states the position regarding dating and signing of judgments dictated in court, more clearly than the previous provision.

Whole judgment need not be read—Sub-section (4).—The proviso to old section 366(1) required the Court to read out the whole judgment if so requested by either party. It will now suffice, under the sub-section, that when the judgment is pronounced by explaining its substance, either the judgment or a copy thereof is made available for the perusal of either party, so that the whole judgment need not be read out.

Pronouncement of judgment in presence of accused—Sub-sections (5) and (6).—Old section 366(2) provided that the judgment should be pronounced in the presence of the accused, except in certain specified instances where the presence of his pleader was sufficient.

Law Commission's observations.—The Law Commission observed as follows on this provision :

“This requirement can give rise to difficulties in cases where there are more accused than one and some of them, out on bail, fail to appeal at the time of judgment. In such cases, the pronouncement of the judgment will have to be postponed even against the accused present in court, till the absconding accused are apprehended. This, apart from wasting the time of the Court, will also cause needless harassment to the other accused. We would, therefore, recommend that a power be given to the court to pronounce judgment in such instances, even if one or more of the several accused in the case are not present to hear it, making it clear that the power is to be used only to prevent undue delay.”

Clear-cut conferment of power on court.—Hence in spite of a saving provision contained in old section 366(3), the court has now been given power in the matter in clearer terms. Sub-section (6) and the proviso thereto have therefore been drafted accordingly. Consequential provision has also been made in section 418(2) to the effect that in such cases the Magistrate shall issue a warrant for the arrest of the accused who is absent.

Sub-sections (5) and (6) deal with two cases separately.—As stated above, under old section 366(2), the presence of the accused's pleader was sufficient when the accused's personal attendance was dispensed with during the trial. The Law Commission thought that it was not necessary to insist on the presence of even the pleader in such cases. Secondly, sub-section (2) of section 366, as it stood, dealt with the cases of the accused in custody as well as the accused on bail; in the interests of clarity therefore the two cases should be provided for separately. Accordingly, sub-section (5) deals with the accused in custody and sub-section (6) does not contain a reference to the presence of the accused's pleader.

Language and contents of judgment.

354. (1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,—

- (a) shall be written in the language of the Court ;
- (b) shall contain the point or points for determination, the decision thereon and the reasons for the decision ;
- (c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced ;
- (d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such

sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

NOTES

This section incorporates the provisions contained in section 367 (except those incorporated in the preceding section) and section 368. The changes made in the old sections are discussed below :

Reference to English language omitted from old section.—Old section 367(1) provided that the judgment of a Court should be written in the language of the Court or in English. The Joint Committee of Parliament in omitting reference to the English language observed :

“The Committee feels that the language to be used for the purposes of the proceedings before any subordinate Court is a matter to be regulated by the provisions of the Constitution or the law of the appropriate Legislature. There is, therefore, no necessity to retain a specific reference to the English language in this clause thereby giving that language a pre-eminent position which it no longer enjoys.”

Death Sentence Law Commission's recommendation.—This is a new provision requiring the Court to state its reasons for awarding the sentence of death or imprisonment for life in a capital case. The Law Commission in its Report on the Capital Punishment expressed the following views in the matter :

“There is a considerable body of opinion which is in favour of a provision requiring the court to state its reasons for imposing the punishment either of death or of imprisonment for life. Further, this would be a good safeguard to ensure that the lower courts examine the case as elaborately from the point of view of sentence as from the point of view of guilt. It would also provide good material at the time when a recommendation for mercy is to be made by the court, or a petition for mercy is considered. Again, it would increase the confidence of the people in the courts, by showing that the discretion is judicially exercised. It would also facilitate the task of the High Court in appeal or in proceedings for confirmation in respect of the sentence (where the sentence awarded is that of death), or in proceedings in revision for enhancement of the sentence (where the sentence awarded is one of imprisonment for life)”.

The Law Commission's Report on the Code recommending the amendment also observed :

“In this connection, it may be noted that there are certain offences for which the Penal Code prescribes the punishment as death or in the alternative, life imprisonment or imprisonment for a term of years. Therefore, the amendment recommended should cover these cases also.”

Special reasons for death sentence.—The Joint Committee of Parliament however modified the recommendation so as to requiring “special reasons” for death sentence and reasons for other sentences. It observed :

“A sentence of death is the extreme penalty of law and it is but fair that when a Court awards that sentence in a case where the alternative sentence of imprisonment for life is also available, it should give special reasons in support of the sentence.”

Some special reasons indicated by the Supreme Court.—In *Balwant Singh v. State of Punjab* AIR 1976 SC 230, the Supreme Court has held that under section 354(3) of the new Code, the Court is required to state the reasons for the sentence awarded and in the case of sentence of death, special reasons are required to be stated. It would thus be noticed that awarding of the sentence other than the sentence of death, is the general rule now and only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of the death sentence. It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of the death sentence in a case. But we may indicate just a few, such as, the crime has been committed by a professional or a hardened criminal, or it has been committed in a very brutal manner or on a helpless child or a woman or the like. The Court therefore held that even after noticing the provisions of section 354(3) of the New Code, the High Court (P & H) committed an error in relying upon the two decisions of the Supreme Court, namely, *Mangal Singh v. State of U.P.* AIR 1975 SC 76 and *Perumal v. State of Kerala* AIR 1975 SC 95 in which the trials were held under the old Code. It wrongly relied upon the principle of absence of extenuating circumstances—a principle which was applicable after the amendment of the old Code from January 1, 1956, until the coming into force of the new Code from April 1, 1974.

Life imprisonment for murder a rule and death sentence exception.—In *E. Anamma v. State of A.P.* AIR 1976 SC 799 the Court observed: “The unmistakable shift in legislative emphasis is that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated. . . . It is obvious that the disturbed conscience of the State on the vexed question of legal threat to life by way of death sentence has sought to express itself legislatively, the stream of tendency being, towards cautious, partial abolition and a retreat from total retention” See also *Harnam v. State of U.P.* AIR 1976 SC 2071; *Har Dayal v. State of U.P.* AIR 1976 SC 2055; and *Ambaram v. State of M.P.* AIR 1976 SC 2196.

Reasons for sentence of short-term.—This is also a new provision inserted at the stage of the passage of the Code in the Rajya Sabha. It was, as explained in the House, “included to restrict short-term imprisonment since . . . a large number of persons in jail are there for short-term and it does not serve a useful purpose.”

Scope of old sub-section (6) widened.—Sub-section (6) of old section 367 provided that for the purposes of that section an order under (old) section 118 [new section 117] or (old) section 123(3) [new section 122(3)] should be deemed to be judgment. The scope of this provision has been widened by including therein orders under sections 117, 125, 138(2), 145 or section 147 of the Code so that reasons will be required to be given in the judgment or final order in any inquiry under any of those sections also.

Incidentally, sub-section (5) of old section 367 which pertained to judgment in trial by jury has been deleted in view of the abolition of jury-trial.

Metropolitan Magistrate's judgment.

355. Instead of recording a judgment in the manner hereinbefore provided, a Metropolitan Magistrate shall record the following particulars, namely :—

- (a) the serial number of the case ;
- (b) the date of the commission of the offence ;
- (c) the name of the complainant (if any) ;
- (d) the name of the accused person, and his parentage and residence ;
- (e) the offence complained of or proved ;
- (f) the plea of the accused and his examination (if any) ;
- (g) the final order ;
- (h) the date of such order ;
- (i) in all cases in which an appeal lies from the final order either under section 373 or under sub-section (3) of section 374, a brief statement of the reasons for the decision.

NOTES

Metropolitan magistrate not to record detailed judgment.—This section corresponds to section 370 of the old Code. It relieves Metropolitan Magistrates (corresponding to Presidency Magistrates) of the task of writing a detailed judgment setting out the point or points for determination, the decision thereon, the reasons for the decision, etc., as provided in the preceding section for other Magistrates. The anomaly in the old provision was pointed out by the Law Commission as follows :

Anomaly in the old provision.—“It will be noticed that under section 411 a sentence of fine not exceeding Rs. 200 is not appealable and, presumably because of this fact, section 370, clause (i) does not require a Presidency Magistrate to record the reasons for the conviction when the fine is within this limit. In regard to sentences of imprisonment, however, the said clause is not logical even where the imprisonment inflicted is not more than six months and consequently the sentence is not appealable under section 411, the Presidency Magistrate has to record reasons for the conviction. Then again, although a judgment of acquittal is appealable under section 417, the Presidency Magistrate need not record even a brief statement of the reasons for his decision which the prosecution might not always find satisfactory. We consider that it would be more logical and reasonable to provide in clause (i) of section 370 that, in all cases in which an appeal lies from the final order either under section 411 or under section 417, the Presidency Magistrate should record a brief statement of the reasons for his decision.”

Reasons to be recorded in case of appealable final order.—The Law Commission, therefore, recommended that in all cases in which an appeal lies from the final order, the Presidency Magistrate should record a brief statement of the reasons for his decision. This has accordingly been provided in clause (i) of the section in place of clause (i) of old section 370.

Order for notifying address of previously convicted offender.

356. (1) When any person, having been convicted by a Court in India of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Indian Penal Code (45 of 1860), or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment for a term of three years or upwards, is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three

years or upwards by any Court other than that of a Magistrate of the second class, such Court may, if it thinks fit, at the time of passing a sentence of imprisonment on such person, also order that his residence and any change of, or absence from, such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) The provisions of sub-section (1) with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences and attempts to commit them.

(3) If such conviction is set aside on appeal or otherwise, such order shall become void.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) The State Government may, by notification, make rules to carry out the provisions of this section relating to the notification of residence or change of, or absence from, residence by released convicts.

(6) Such rules may provide for punishment for the breach thereof and any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

NOTES

This section substantially incorporates the provisions contained in section 565 of the old Code. References to specified Magistrates, etc., as also (former) Indian States occurring in the old provision have been omitted.

Section applicable to persons convicted of attempts etc.—Sub-section (2) is a new provision. Section 565 (old) empowered the courts to order previously convicted offenders to notify their place of residence and any change of, or absence from, such residence after their release. It was held in *Doraiswamy* AIR 1942 Mad. 521 that the section did not apply to persons convicted of attempts, abetments and conspiracies to commit any of the offences listed in sub-section (1) of section 565. The Law Commission, therefore, considered it desirable that the section should apply also to such convicts. Hence new sub-section (2).

Order to pay compensation.

357. (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may when passing judgment, order the whole or any part of the fine recovered to be applied.—

- (a) in defraying the expenses properly incurred in the prosecution ;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court ;
- (c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1885), entitled to recover damages from the person sentenced for the loss resulting to them from such death ;

- (d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.
- (2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.
- (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.
- (4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.
- (5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

NOTES

Compensation not qualified by the word "substantial".—This section incorporates the provisions contained in sections 545 and 546 of the old Code. Under clause (b) of sub-section (1) of section 545 of the old Code, the Court could direct payment of compensation to the victim of crime when "substantial compensation" was, in the opinion of the Court, recoverable by such person in a Civil Court. In other words, the act which constituted an offence should also be a tort. The word "substantial" appeared to have been used to exclude cases where only nominal damages could be recoverable. Since, as observed by the Law Commission, payment of compensation was purely within the discretion of the Court and the provision was also not very liberally utilized, the word "compensation" is now no more qualified by the word "substantial" in new clause (b) of sub-section (1) of section 357.

Compensation in case of loss or injury.—Sub-section (3) deals with a case when a court imposes a sentence of which fine does not form part. In such a case also the court has been empowered to award compensation to the person who has suffered loss or injury as a result of the offence.

Compensation to persons groundlessly arrested.

358. (1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one hundred rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

NOTES

Scope of old provision widened.—This section corresponds to section 553 of the old Code. The old section which provided for payment of compensation to persons groundlessly arrested was restricted to arrests in presidency towns. By the new section the provision has been extended to all places. The limit of compensation has also been increased from Rs. 50 to Rs. 100.

Order to pay costs in non-cognizable cases.

359. (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant, in whole or in part, the cost incurred by him in the prosecution, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days and such costs may include any expenses incurred in respect of process-fees, witnesses and pleader's fees which the Court may consider reasonable.

(2) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

NOTES

Court's power to award full costs.—This section corresponds to section 546A of the old Code. The old provision empowered the Court to order, in a non-cognizable offence, payment of fees to the complainant, *i.e.*, fees paid on the complaint/petition and the process fees for summoning witnesses and the accused. These fees were small amounts compared to the total expenses properly incurred by the complainant in prosecuting the offender. The (new) section empowers the Court to award full costs.

Order to release on probation of good conduct or after admonition.

360. (1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour :

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first

class, forwarding the accused to, or taking bail for his appearance before such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law :

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

NOTES

This section combines the provisions contained in quite a few sections of the old Code. Sub-sections (1) and (3) to (6) correspond to old section 562 ; sub-section (2) corresponds to old section 380 ; sub-section (7) corresponds to old section 564(1) ; sub-sections (8) and (9) correspond to old section 563 ; and sub-section (10) corresponds to old section 564(2). The changes made in the old provisions are detailed below :

Scope of old provision extended.—The old provision was applicable to persons not under the age of twenty-one years of age and convicted of an offence punishable with imprisonment for not more than seven years. The scope of this provision has been extended to cover also persons convicted of an offence punishable with fine only.

In the Proviso to sub-section, reference to third class Magistrates occurring in the corresponding old provision has been omitted since this class of Magistrates has been abolished in the new Code.

Offence punishable with fine covered.—Under old section 562(1A), it was permissible to release a first offender after admonition only in the case of certain offences punishable under the IPC. Occasionally, doubts arose whether an offence punishable only with fine was covered by the section. Although the Courts had answered this question in the affirmative [*See, for instance, Emp. v. Manchershaw* AIR 1935 Bom. 156], the position has been made clear in the sub-section.

Reference to Court of Session.—Reference has been made to Court of Session in these sub-sections.

Reference to Acts of 1958 and 1960.—For reference to the Reformatory Schools Act, 1897, contained in old section 546(2) to which the present sub-section corresponds, reference to Acts of 1958 and 1960 or “any other law for the treatment, training and rehabilitation of youthful offenders” has been substituted.

Section not mandatory.—Section 360 is not a mandatory provision. The exercise of the power thereunder is purely discretionary one even if under section 361, the Court has to give reasons for not extending the benefit of section 360 or of the Probation of Offenders Act to the accused—*Ram Bahadur v. State* 1970 Cr. LJ 1279.

Section when does not apply.—Sub-section (3) does not apply to an offence which, though punishable with maximum sentence of two years, cannot be said to be of a trivial nature—*Ibrahim v. State* 1974 Cr. LJ 993.

Special reasons to be recorded in certain cases.

361. Where in any case the Court could have dealt with,—

- (a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or
- (b) a youthful offender under the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders,

but has not done so, it shall record in its judgment the special reasons for not having done so.

NOTES

Court to give special reasons for not applying special laws.—This is a new provision. The Joint Committee of Parliament in recommending this provision observed :

“It has come to the notice of the Committee that the salutory provisions of the Probation of Offenders Act, 1958, the Children Act, 1960 or other similar laws intended for the treatment of youthful offenders are being applied by Courts only rarely although it was expected that the provisions of these Acts would be applied liberally by the Courts. To ensure that they are so applied, the new provision has been inserted requiring the Court to give reasons in the judgment for not applying the provisions of the special laws whenever they may be applied.”

Non-mention of special reasons, effect of.—Where in a case the thirty-five year old accused was sentenced for manufacturing illicit arms as a business proposition and there was no circumstance mitigating the gravity of the crime, held that non-mention of special reasons for non-invoking the provisions of sections 360 and 361 did not render the sentence erroneous—*Khalif v. State* 1976 Cr. LJ 465.

Court not to alter judgment.

362. Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

NOTES

Reference to Letters Patent omitted.—This section corresponds to section 369 of the old Code. Old Section 369 made a reference to “High Court established by the Letters Patent”, etc. These words have now been omitted in the present section as, first, Letters Patent, etc., are also laws for the time being in force, and hence the words are redundant and somewhat confusing ; and secondly, reference to Letters Patent of the older High Courts has become practically obsolete, in view of the Appeal provisions contained in the new section 374.

Scope of old section widened.—The scope of the provision contained in the old section has been widened so as to cover final orders disposing a case also in addition to judgments. The Joint Committee of Parliament observed :

“The Committee is of opinion that the prohibition in this clause should apply to every final order disposing of a case and not merely to a judgment in a trial.”

Copy of judgment to be given to the accused and other persons.

363. (1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.

(2) On the application of the accused, a certified copy of the judgment, or when he so desires, a translation in his own language if practicable or in the language of the Court, shall be given to him without delay, and such copy shall,

in every case where the judgment is appealable by the accused, be given free of cost :

Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same.

(3) The provisions of sub-section (2) shall apply in relation to an order under section 117 as they apply in relation to a judgment which is appealable by the accused.

(4) When the accused is sentenced to death by any Court and an appeal lies from such judgment as of right, the Court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

(5) Save as otherwise provided in sub-section (2), any person affected by a judgment or order passed by a Criminal Court shall, on an application made in this behalf and on payment of the prescribed charges, be given a copy of such judgment or order or of any deposition or other part of the record :

Provided that the Court may, if it thinks fit for some special reason, give it to him free of cost.

(6) The High Court may, by rules, provide for the grant of copies of any judgment or order of a Criminal Court to any person who is not affected by a judgment or order, on payment, by such person, of such fees, and subject to such conditions, as the High Court may, by such rules, provide.

NOTES

This section incorporates the provisions contained in sections 371 and 548 of the old Code. The changes made in the old provisions are indicated below :

Copy of judgment to be given to accused immediately.—Sub-section (1) corresponds to sub-section (4) of section 371 of the old Code. In the old provision, it was provided that a copy of the “finding and sentence” should be given to the accused “as soon as may be after the delivery of the judgment”. The present provision has been simplified to require that a copy of the “judgment” should be given to the accused “immediately” after its pronouncement.

Copy to be a certified copy.—Sub-section (2) corresponds to sub-section (1) of section 371 of the old Code. Under that sub-section, a copy of the judgment had to be given without delay to the accused on his application. Though the section did not say that it should be a certified copy, the Supreme Court in *State of U.P. v. C. Tabit* 1958 SCR 1275 held that “whether it is the accused person who applied for a copy. . . or it is the State which applied for a copy, the copy supplied by the public officer must be a certified copy”. In conformity with this decision, the word “copy” has been qualified by the word “certified”.

Copy free of cost if judgment appealable.—The old sub-section further provided that the copy should be given free of cost except in a summons case. Considering that the main object of the sub-section was to facilitate the lodging of an appeal by the accused without avoidable delay, the latter part of the (new) sub-section provides that “such copy shall, in every case where the judgment is appealable by the accused, be given free of cost”. [Sub-section (2)]

The proviso to sub-section (2) is new. The Law Commission in recommending the provision contained in the Proviso observed :

In case of death sentence copy of judgment to be given immediately free.—“In cases where the High Court passes or confirms or maintains a death sentence, a certified copy of the judgment should, in our view, be immediately given to the accused whether or not he applies for it. This would enable him to make immediate preparation for an appeal.”

Provision applicable to an order under section 117.—Sub-section (3) is new [old sub-section (2) of section 371 related to trial by jury and hence has been deleted]. Since an order under section 117 [to give security for good behaviour] may result in imprisonment of the defendant, the provision of section 363(2) [new] has been made applicable to an order under section 117 of the [new] Code.

Copy to a person other than a party to the case.—Sub-section (5) corresponds to section 548 of the old Code. In the words of the Joint Committee of Parliament :

“Copies of the judgment of a Criminal Court may at times be required by persons other than parties to the case for certain other purposes, such as, in connection with the determination of the question of disqualification of a candidate for election or other purpose.”

Hence, the old section has been redrafted by the Committee so as to permit the grant of a copy of a judgment or order to any person other than the parties, subject to payment of such fees and compliance with such conditions as may be prescribed by rules made by the High Court.

Judgment when to be translated.

364. The original judgment shall be filed with the record of the proceedings and where the original is recorded in a language different from that of the Court and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

365. In cases tried by the Court of Session or a Chief Judicial Magistrate, the Court or such Magistrate, as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held.

NOTES

Sections 364 and 365 correspond to sections 372 and 373 of the old Code respectively. No change has been made in the old sections.

CHAPTER XXVIII

SUBMISSION OF DEATH SENTENCES FOR CONFIRMATION

Sentence of death to be submitted by Court of Session for confirmation.

366. (1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

(2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

Power to direct further inquiry to be made or additional evidence to be taken.

367. (1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself or direct it to be made or taken by the Court of Session.

(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.

(3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.

Power of High Court to confirm sentence or annual conviction.

368. In any case submitted under section 366, the High Court—

- (a) may confirm the sentence, or pass any other sentence warranted by law, or
- (b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or on amended charge, or
- (c) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or if an appeal is presented within such period, until such appeal is disposed of.

Confirmation or new sentence to be signed by two Judges.

369. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

Procedure in case of difference of opinion.

370. Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by section 392.

Procedure in cases submitted to High Court for confirmation.

371. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session.

NOTES

Sections 366 to 371 correspond to sections 374 to 379 of the old Code respectively. A few changes made in the provisions of this group of sections may be noted.

Accused to be held in prison.—Sub-section (2) of section 366 is new. It has been added on the recommendation of the Law Commission to give a specific statutory authority for holding the accused in prison after the Court of Session has passed sentence of death and until it is executed in due course. This new provision is similar to the one contained in section 418, in regard to execution of sentence of imprisonment.

Reference to Jury omitted.—In sub-section (2) of old section 375, there was a reference to jury. In view of the abolition of jury trials, that reference has been omitted in the present sub-section (2) of section 367.

Reference to section 392.—Old section 378 repeated the wording of old section 429. New section 370 instead of repeating the wording, now, makes reference to section 392 (corresponding to old section 429).

Heading of Chapter.—Old section 380 empowered courts to release certain convicted first offenders on probation of good conduct instead of sentencing them to imprisonment. This section has been omitted in view of the provisions of the Probation of Offenders Act, 1958. Consequently, the heading of the Chapter has been altered from “Of the Submission of Sentences for Confirmation” to “Submission of Death Sentences for Confirmation”.

CHAPTER XXIX
APPEALS

No appeal to lie unless otherwise provided.

372. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour.

373. Any person,—

- (i) who has been ordered under section 117 to give security for keeping the peace or for good behaviour, or
- (ii) who is aggrieved by any order refusing to accept or rejecting a surety under section 121,

may appeal against such order to the Court of Session :

Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (4) of section 122.

Appeals from convictions.

374. (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years [has been passed against him or

against any other person convicted at the same trial] may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

- (a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or
- (b) sentenced under section 325, or
- (c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate,

may appeal to the Court of Session.

No appeal in certain cases when accused pleads guilty.

375. Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,—

- (a) if the conviction is by a High Court ; or
- (b) if the conviction is by a Court of Session, Metropolitan Magistrate of the first or second class, except as to the extent or legality of the sentence.

No appeal in petty cases.

376. Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely :—

- (a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine ;
- (b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine ;
- (c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees ; or
- (d) where, in a case tried summarily a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees :

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

- (i) that the person convicted is ordered to furnish security to keep the peace ; or
- (ii) that a direction for imprisonment in default of payment of fine is included in the sentence ; or
- (iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

Appeal by the State Government against sentence.

377. (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [*the Central Government may also direct*] the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

Appeal in case of acquittal.

378. (1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [*or an order of acquittal passed by the Court of Session in revision.*]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

Appeal against conviction by High Court in certain cases.

379. Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to

imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

Special right of appeal in certain cases.

380. Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

Appeal to Court of Session how heard.

381. (1) Subject to the provisions of sub-section (2), an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge :

Provided that an appeal against a conviction on a trial held by a Magistrate of the second class may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate.

(2) An Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate shall hear only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or as the High Court may, by special order, direct him to hear.

Petition of appeal.

382. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

Procedure when appellant in jail.

383. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Summary dismissal of appeal.

384. (1) If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily :

Provided that—

- (a) no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same ;
- (b) no appeal presented under section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case ;

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4) Where an appeal presented under section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 393, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law.

Procedure for hearing appeals not dismissed summarily.

385. (1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given—

- (i) to the appellant or his pleader ;
- (ii) to such officer as the State Government may appoint in this behalf ;
- (iii) If the appeal is from a judgment of conviction in a case instituted upon complaint, to the complainant ;
- (iv) if the appeal is under section 377 or section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

(2) The Appellate Court shall then send for the record of the case, if such record is not already available in that court, and hear the parties :

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not, except with the leave of the Court, urge or be heard in support of any other ground.

Powers of the Appellate Court.

386. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

- (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law ;
- (b) in an appeal from a conviction—
 - (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent

jurisdiction subordinate to such Appellate Court or committed for trial, or

- (ii) alter the finding, maintaining the sentence, or
 - (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same ;
- (c) in an appeal for enhancement of sentence—
- (i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or
 - (ii) alter the finding maintaining the sentence, or
 - (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same ;
- (d) in an appeal from any other order, alter or reverse such order ;
- (e) make any amendment or any consequential or incidental order that may be just or proper :

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement :

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

Judgments of subordinate Appellate Court.

387. The rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate :

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order of High Court on appeal to be certified to lower Court.

388. (1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed and if such Court is that of a Judicial Magistrate other than the Chief Judicial Magistrate, the High Court's judgment or order shall be sent through the Chief Judicial Magistrate ; and if such Court is that of an Executive Magistrate, the High Court's judgment or order shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court ; and, if necessary, the record shall be amended in accordance therewith.

Suspension of sentence pending the appeal ; release of appellant on bail.

389. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1) ; and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal.

390. When an appeal is presented under section 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

Appellate Court may take further evidence or direct it to be taken.

391. (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

Procedure where Judges of Court of Appeal are equally divided.

392. When an appeal under this Chapter is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their

opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion :

Provided that if one of the Judges constituting the Bench, or where the appeal is laid before another Judge under this section, that Judge so requires, the appeal shall be re-heard and decided by a larger Bench of Judges.

Finality of judgments and orders on appeal.

393. Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the cases provided for in section 377, section 378, sub-section (4) of section 384 or Chapter XXX :

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits,—

- (a) an appeal against acquittal under section 378, arising out of the same case, or
- (b) an appeal for the enhancement of sentence under section 377, arising out of the same case.

Abatement of appeals.

394. (1) Every appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant :

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal ; and if leave is granted, the appeal shall not abate

Explanation: In this section, “near relative” means a parent, spouse, lineal descendant, brother or sister.

NOTES

Modifications by new Code : Sections 372 to 394, which deal with appeals correspond to sections 404 to 431 of the old Code. The following changes have been made in the old law on the subject of Appeals :

- 1. Appeal against conviction by Second Class Magistrate to Court of Session.—** Against a conviction by a second class Magistrate, an appeal will lie to the Court of Session as under the old Code [New Section 374(3)(a)]. The Joint Committee of Parliament observed :

“The better arrangement would be to have all appeals filed before a Court of Session and to empower the Sessions Judge to transfer appeals against conviction by a Magistrate of the Second Class for disposal, either to an Assistant Sessions Judge or to the Chief Judicial Magistrate, in accordance with such general or special orders as may be made by the High Court or the Sessions Judge.” [New section 381(1) Proviso and Section 408]

2. *Appeal against conviction by First Class Magistrate to Court of Session.*—Against a conviction by a First Class Magistrate (including the Chief Judicial Magistrate) or an Assistant Sessions Judge, an appeal will lie to the Sessions Judge irrespective of the sentence imposed [*New Section 374(3)(a)*]. Under the old Code, such appeals could be filed directly in the High Court if the sentence was one of the imprisonment for more than four years [old section 408]. As the Law Commission observed : “There is no need for the special provision.... The load on the High Court will be lightened to a small extent by transferring these appeals to the Court of Session”.
3. *Appeals against conviction by Metropolitan Magistrate to Sessions Judge.*—Against a conviction by a Metropolitan Magistrate, an appeal will lie to the Sessions Judge [*New section 374(3)(a)*]. Under the old provision appeals against conviction by a Presidency Magistrate lay directly to the High Court [*Old section 411*]. This is because “it is considered that there is no need to provide for a forum of an appeal in respect of the Metropolitan Magistrate higher than what is provided in respect of even the Chief Judicial Magistrate.”
4. *Appeal against conviction on trial only by High Court to Supreme Court.*—Against a conviction on a trial by a High Court, an appeal will lie to the Supreme Court and not to the same High Court as it was under the old Code. [*New section 374(1), old section 411A*]. The Law Commission observed :

“Though it is proposed to abolish the ordinary original criminal jurisdiction of High Courts, this section, if retained, will continue to apply to trials held by a High Court in the exercise of its extraordinary jurisdiction. Since such trials are extremely rare, we feel that, in the interests of finality to the proceedings, appeals should lie direct to the Supreme Court and not to another bench of the same High Court. Instead of the present elaborate rules, we would recommend a simple provision to the effect that an appeal shall lie to the Supreme Court from a conviction in a trial held by a High Court on fact as well as law, but there will be no appeal in the event of an acquittal. If the State wishes to appeal from an acquittal by a High Court, it will have to seek leave to appeal under article 136 of the Constitution.”

5. *Appeal against death sentence etc., by High Court to Supreme Court.*—Where a High Court has sentenced a person to death or to imprisonment for life or to imprisonment for ten years or more in an appeal against his acquittal an appeal will lie to the Supreme Court [*New section 379*]. This is in conformity with the provisions of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (28 of 1970) made under article 134(2) of the Constitution.
6. *Appeal on inadequacy of sentence to High Court only in certain cases.*—The State Government and the Central Government in respect of cases investigated by the Special Police Establishment [or by any other statutory investigating agency] can file an appeal against the sentence on the ground of its inadequacy, to the High Court only. The Law Commission made the following observations while recommending this provision [*New section 377, old section 417*] :

“It will be noticed that although section 417 permits the State Government to appeal against an order of acquittal, it does not permit any

appeal against a conviction when the punishment imposed may be grossly inadequate. Any error in sentencing can be remedied only by the exercise of the revisional powers of the High Court. This is somewhat unsatisfactory. There seems no reason why the State Government should not be able to appeal against an inadequate sentence, nor why such an appeal cannot be handled by the ordinary court of appeal. Cases of inadequate sentences are frequently occurring, and we consider the ordinary court of appeal should, in each case where the State considers it proper to lodge an appeal, be able to deal with it."

The Joint Committee of Parliament while providing for appeal to High Court only in such cases and extending the scope of the old section 417 to other statutory investigations observed :

"An appeal for enhancement of a sentence on the ground of its inadequacy should in the Committee's opinion be entertained only by the High Court and not by any Appellate Court. This is because the punishment awarded by a competent Court should not be disturbed except by the Highest Court in the State. Further certain uniform standards have to be adopted in this regard and this can be secured only if the power is exercised by the High Court. Sub-clause (2) has been expanded to include cases where the investigation is made by other Central authorities vested by a Central Act with the power to make investigation in respect of certain offences such as those under the Customs Act, 1961, the Railway Protection Force Act, etc."

7. *Appeal by State against acquittal to High Court only with leave.*—As regards appeals by the State in cases of acquittals [*New section 378, old section 417*], the Joint Committee of Parliament observed :

"The Committee was given to understand that in some cases this executive power to file appeals against an order of acquittal was exercised somewhat arbitrarily. It would therefore be desirable and expedient to provide for a check against arbitrary action in this regard. The Committee has therefore provided that an appeal against an order of acquittal should be entertained by the High Court only if it grants leave to the State Government in this behalf.

Sub-clause (4) prescribes a period of limitation of 60 days for an appeal against an order of acquittal at the instance of a complainant. In quite a few cases prosecutions are launched by means of complaints by public servants, such as prosecutions for offences under some special laws such as the law relating to Foreign Exchange, smuggling, etc. In such cases, the administrative procedure for taking a decision in the matter takes quite a long time and in some cases such procedure is not completed before the prescribed period of limitation of 60 days. In consequence there might be miscarriage of justice.

Most of these special laws require to be enforced strictly with a view to put a stop to various types of anti-social activities and if wrong acquittals are not appealed against, there will be an adverse effect on the enforcement of such laws. The Committee therefore has considered it desirable to extend the period of limitation to 6 months whenever the complainant is a public servant and necessary amendment has been made for the purpose."

8. *Instances where no right of appeal provided.*—There will be no right of appeal :

- a. If a High Court convicts a person on a plea of guilty [*New section 375, old section 412*]. The old provision had permitted appeal in such cases "to the extent or legality of the sentence". This exception has been removed. In recommending this, the Law Commission observed :

"We would go further. In our view, where a High Court convicts and sentences a person on a plea of guilty, an appeal should not be allowed even as regards the extent or legality of the sentence. It can hardly be contemplated that the judgment of a High Court would suffer from a serious infirmity in respect of the extent or legality of the sentence. We recommend an amendment of the section to bar an appeal in such cases."

- b. If a High Court imposes only a sentence of imprisonment for a term not exceeding six months or a fine not exceeding Rs. 1,000 (as against six months and Rs. 200 respectively in the old Code). [*New section 376(a), old section 413*] ;
- c. If a Metropolitan Magistrate imposes a sentence of imprisonment for a term not exceeding three months or a fine not exceeding Rs. 200 (as against six months and Rs. 200 respectively in the old code). [*New section 376(b), old section 413*] ;
- d. If a Court of Session imposes a sentence of imprisonment for a term not exceeding three months or a fine not exceeding Rs. 200 (as against one month and Rs. 50 respectively in the old code) [*New section 376(b), old section 413*] ; and
- e. If a Magistrate of the first class imposes a sentence of fine not exceeding Rs. 100 (as against Rs. 50). [*New section 376(c), old section 413*] or if the sentence is a combination of imprisonment and fine within the limits indicated in (b) to (e) above. The Law Commission in recommending the upward revision in respect of fine limits observed :

"In our view, there should be a general upward revision in the non-appealable limit as regards fine in view of the change in the value of the rupee, and also because it would be a recognition, though indirect, of the modern tendency to consider fine as a good deterrent punishment and a means of compensating the victim of the offence."

9. *Changes in powers of Appellate Courts.*—The following changes have been made in regard to powers, etc., of Appellate Courts :

- a. An appellate court can in an appeal against conviction enhance the sentence after giving the accused an opportunity of showing cause against such enhancement [*New section 386(c)(iii)*]. Under the old Code this power was available only to the High Court [*Old section 423(1A)*]. The conferment of power to enhance the sentence on all appellate courts is to avoid frequent references to the High Court in the matter.
- b. An appellate court will not entertain arguments on grounds not mentioned in the appeal. [*New section 385(3)*]. The Supreme Court had, in *R.D. Yadav v. State of Bombay* AIR 1960 SC 748 held that even

when an appeal from a conviction was solely on the ground of severity of the sentence, and the Court had admitted it for hearing on that ground, the appellant could raise any other ground he wished and the whole case was open for argument. In order, therefore, to avoid a waste of time, this restriction has been imposed on the appellate court.

- c. An appellate court cannot impose a higher sentence than what would have been imposed by the court which passed the original sentence or order under appeal. [*New section 386(b)(iii)*]. This gives a statutory recognition to the Supreme Court decision in *Jagat Bahadur v. State of M.P.* AIR 1966 SC 945 "in order that the point may not be lost sight of by the lower appellate court".
- d. A jail appeal will not be dismissed summarily without recording reasons and before the time for filing a regular appeal has expired [*New section 384(1)(b) and (c)*]. In recommending this provision, the Law Commission observed :

"In *Pratap Singh v. State* AIR 1961 SC 588, the Supreme Court has ruled that if a jail appeal under section 420 is summarily dismissed, then after the dismissal of that appeal, no appeal under section 419 is competent. In that particular case, the second appeal was presented after the jail appeal had been dismissed ; but it is not unlikely that the Courts will apply the same rule to a pending appeal and hold that if a jail appeal is dismissed summarily, no other appeal, although pending at that time, can be heard. This, we think, may lead to hardship. If we were satisfied that a jail appeal received the same attention by the appellate Court as any other appeal, we would have been content to leave the matter as it stands, hoping that the appellate Courts will so arrange their work that such two appeals are always heard together. We have information, however, that except perhaps in the High Courts, "jail appeals" are not considered with particular care, and in many cases, the grounds of appeal drafted in jail do not attract sufficient attention and, even if there be any point in the appeal, it is liable to be missed. Our law entitles an accused person to obtain legal assistance and present his case in court through a competent pleader, and we are anxious that the spirit of this rule should be preserved.

We therefore propose to make a legal provision that a jail appeal must not be summarily dismissed till the time for filing an ordinary appeal has expired. This will ensure that an appellant wishing to avail of legal assistance will have presented an appeal under section 419 before his appeal, if any, presented under section 420 comes up for disposal. We are further providing that, if in spite of this, a jail appeal happens to be dismissed summarily, that would not debar the Court from considering an appeal under section 419 on the merits, provided such appeal is otherwise duly presented and the Court is satisfied "that the interest of justice require that it should be heard".

The Joint Committee of Parliament which considered this provision observed :

"The Committee gave careful consideration to the need for making the existing differentiation between jail appeals and regular appeals

in the matter of giving to the appellant the opportunity to be heard before the appeal is summarily dismissed by the Appellate Court. Under the original clause a jail appeal is liable to be dismissed summarily without such opportunity being given to the appellant in jail whereas if he appears through a pleader such opportunity has to be given. This provision is obviously inequitable and affects adversely the poorer persons who cannot afford to engage a pleader.

The Committee feels that this differentiation is not proper and cannot be justified.

The provision has accordingly been amended to ensure that even in the case of jail appeal it should not be dismissed summarily without giving the appellant a reasonable opportunity of being heard unless the Appellate Court considers that the appeal is frivolous or the production of the accused in the Court would involve inconvenience disproportionate in the circumstances of the case.

The Committee also feels that while it is unnecessary to provide that in every case the Court shall call for the record before dismissing appeal summarily, there need not be any undue emphasis on the power of the Court not to call for the record. The words "but shall not be bound to do so," occurring in the old section 421(2) have accordingly been deleted."

10. *Bail pending orders of an appellate court.*—A convicting court can grant bail pending orders of an appellate court even if the offence is non-bailable, if the sentence of imprisonment does not exceed three years and if the bail is refused, reasons will have to be recorded [*New section 389(3)(i), old section 426(2A) and (2B)*]. The Law Commission in recommending this provision observed :

"We consider that after conviction there is no justification for making a distinction between bailable and non-bailable offences and we recommend that for the purposes of sub-section (2A) bailable and non-bailable offences should be dealt with on the same footing."

The Joint Committee of Parliament observed :

".....It would be unjust to refuse bail merely because the person concerned has been convicted by the trial court. To ensure that refusal of bail in such cases should be in exceptional circumstances it is considered desirable to require that special reasons should be recorded by the Court before refusing bail."

11. *Appeal not to abate on death of appellant subject to conditions.*—An appeal against a conviction and sentence of imprisonment will not abate on the death of the appellant if his near relatives obtain leave of court to continue the appeal, within 30 days of the death of the convict. [*New section 394—Proviso, old section 431*].

In *B. Gajapathi Rao v. State of Andhra Pradesh* AIR 1964 SC 1645, the Supreme Court refused to grant leave to the legal representative of the appellant who had died during appeal, on the principle that such a sentence would not affect his property. Although the appeal was under article 136 of the Constitution, and (old) section 431 did not in terms apply to the case, the Court said that it would not recognise a kind of interest which the legislature had not recognised. The English rule that law courts do not recognise any interest other than pecuniary interest seemed to be the basis of that decision.

The Law Commission observed : "Though in a majority of cases, where the appellant, who is sentenced to imprisonment, dies during the pendency of the appeal, the interest of his legal representatives in the appeal may be purely sentimental, there are exceptional cases, where the interest may also be pecuniary. Thus, if the conviction is on a charge of murder of a near relation, whose heir or one of whose heirs is the alleged murderer, he (if the conviction is not set aside) will be disqualified from inheriting his property. If he dies during the pendency of the appeal, his heirs have a pecuniary interest in prosecuting the appeal. If the appeal succeeds, their right of inheritance to the property of the deceased through the appellant will be saved.

So far as revision is concerned, it has been held by the Supreme Court in *State of Kerala v. Naravani Amma* AIR 1959 SC 144, that the High Court can exercise the power of revision in respect of an order made against the accused person even after his death."

Thus the object of giving this right to continue the appeal is "to provide a machinery whereby the children or the members of the family of a convicted person who dies during appeal could test the conviction and get rid of the odium which would otherwise attach them".

12. *Appeal against acquittal not barred.*—The new Proviso to section 393 provides that the disposal of appeal against a conviction is no bar to the hearing of an appeal against acquittal or for the enhancement of sentence (if such enhancement has not been considered in the said appeal) arising out of the same case.

The new provision is intended to clarify the law about which there was some controversy [See, *State v. Mansa Singh* AIR 1958 Punj. 233 ; *State v. Diwanji* AIR 1963 Guj. 21] Government's appeals against the inadequacy of sentence are also covered by the new provision. The *non obstante* clause in the Proviso also makes it clear that the power of the appellate court to hear a represented appeal is not affected notwithstanding the summary dismissal of a jail appeal.

13. *Hearing of appeal in case of difference of opinion.*—When an appeal is heard by a Bench of two Judges of a High Court and they differ and if either of them or the third Judge to whom the case may be referred so desires, the appeal shall be heard by a Bench of three or more Judges. [New Proviso to section 392]. This is in order to deal with difficult cases which may arise in cases of difference of opinion.

14. *Other changes relating to appeal provisions.*—Some other changes made in the various sections of the old Code, relating to appeals may also be noted :

- a. The second Proviso to old section 408, regarding appeal from a conviction by a Magistrate for sedition has been omitted. As observed by the Law Commission, "Trials for sedition are rare and the appeals in question would be rarer still. In any event there is no good reason why they should not lie to the Court of Session."
- b. Reference to District Magistrate, who will not hereafter hold any trials, due to separation has been omitted.
- c. The provision of section 376(d) (third Proviso) is intended to clarify that it applies to cases where two sentences of fine which together do not exceed the limit mentioned in the section are awarded.

- d. In sub-section (2) of section 381, the High Court has been substituted for the State Government in the old section 409(2), as control over subordinate courts is vested in the High Courts by the Constitution.
- e. Due to abolition of jury, old section 418 dealing with jury-trials has been omitted.
- f. Before summary dismissal of appeal under section 384, the Appellate Court, other than the High Court, has to record its reasons for doing so [sub-section (3)]. The intention is that the orders of the Court of Session or Chief Judicial Magistrate are liable to be revised by the High Court and it would be very helpful if reasons for summary dismissal of appeals existed on the record.
- g. Section 385(1)(iii) is a new provision giving a right to a private complainant who might have initiated the proceedings in the trial court to appear in appeal proceedings. Along with the notice of hearing he will also get a copy of the grounds of appeal.
- h. Sub-section (2B) of old section 426 regarding special leave by the Supreme Court has been omitted as there is no need of it on practical considerations.
- i. Old section 428(3) provided that "Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken". This has been amended in section 391(3) which says that "The accused or his pleader shall have the right to be present when the additional evidence is taken". This is intended to take away the discretion of the Appellate Court in the matter.
- j. The word "case" occurring in old section 429 has been substituted by the word "appeal" in corresponding section 392, to avoid difference of judicial opinion on the interpretation of the word 'case' which had arisen in the past.

Amendments made by Amendment Act, 1978.—The Amendment Act, 1978 has amended sub-section (2) of section 374, sub-section (2) of section 377 and sub-section (1) of section 378. Amendments are explained in the following paras.

1. *Sub-section (2) of section 374.*—The amendment provides for cases where there are two or more accused persons. The right of appeal, where the appealable sentence has been passed against such person or against any other person convicted at the same trial, will be available to all the accused persons irrespective of the sentence passed on each. Thus, amendment restores the position as it was under the old Code.
2. *Sub-section (2) of section 377.*—The amendment clarifies that the State Government, besides, the Central Government, can also direct the Public Prosecutor to present an appeal against inadequate sentence in cases in which the offence was investigated by the Delhi Special Police Establishment or any other agency empowered to investigate an offence under any other Central Act.
3. *Sub-section (1) of section 378.*—The amendment provides that an appeal can be filed in the High Court against an order of acquittal passed by Court of Session in revision.

Some judicial decisions on appellate provisions.—The appeal provisions contained in sections 372 to 394 of the new Code have been summarised above. Some of these provisions have come up for judicial interpretations. They are discussed below :

1. *Right of appeal restrictive* [section 374].—In regard to form as well as sentencing order, the new provisions of right of appeal contained in sections 374 and 376(b) are manifestly restrictive inasmuch as now the appeal against conviction by a Metropolitan Magistrate lies to the Court of Session (as against the High Court in the old Code) and only if the Metropolitan Magistrate passes an order of sentence of imprisonment exceeding three months or a fine exceeding Rs. 200 or both—*H.N. Bhavasar v. State of Gujarat*, 1976 Cr. LJ 84.
2. *Scope of section 378.*—In *Public Prosecutor APHC v. A.K. Murty* AIR 1975 SC 54, the question was whether the public prosecutor, in order to have the appeal “entertained”, should come up once with an application, seeking leave or permission of the Court to present the appeal, and again, if leave is granted, present the petition of appeal seeking entertainment of the appeal. The Supreme Court observed : while we are of the view that the public prosecutor must seek the leave of the Court before the appeal can be entertained, we do not see any force in the view...that the public prosecutor will be entitled to present petition of appeal only after leave is granted, that is to say, he must cross one hurdle after the other. We do not think that it was the intention of the Parliament to prescribe two separate stages. The object of the New Code is to see that there are no avoidable procedural delays and at the same time ensure a fair trial to the accused. It should be borne in mind that section 378 lays down only the procedure in the matter of presentation of appeals against orders of acquittal. There is nothing in sub-section (3) which is susceptible of being construed as providing two stages : (i) making an application for leave ; and (ii) then, if leave is granted, presenting the petition of appeal. Sub-sections (1) and (3) of section 378 when read together, will make it clear that there are two stages and the Court can grant leave to entertain the appeal at one and the same time. It will be open to the public prosecutor, in the appeal petition itself which he presents, to seek leave of the High Court without having to file another application in that behalf. There is no prohibition in seeking two prayers in one and the same petition.”
3. *High Court’s power to act suo motu.*—The existence of section 377 does not exclude revisional jurisdiction of High Court to act *suo motu* for enhancement of sentence. The Supreme Court will be slow to interfere with the High Court’s jurisdiction under article 136 of the Constitution—*Nadir Khan v. State* AIR 1976 SC 2205.
4. *Appeal against acquittal when entertainable by High Court.*—In an appeal against acquittal, the High Court would not ordinarily interfere with the trial Court’s conclusion unless there are compelling reasons to do so, *inter alia*, on account of manifest errors of law or of fact resulting in miscarriage of justice. Once the appeal is rightly entertained against the order of acquittal, the High Court is entitled to reappreciate the entire evidence independently and come to its own conclusion. Held on the facts and circumstances of the case that the High Court was justified in entertaining the appeal against acquittal. An absolutely erroneous conclusion on an important aspect of the case had led to a failure of justice—*Umedbhai v. State of Gujarat* AIR 1978 SC 424.

5. *Whether section 378(5) covers cases not instituted upon complaint.*—Sub-section (1) of section 378 is subject to sub-section (5) thereof. Sub-section (5) prescribes the periods after the expiry of which an application under sub-section (4) made by a complainant for grant of special leave to appeal is not to be entertained. Further, sub-section (6) provides that if in any case the application under sub-section (4) is refused, no appeal from that order of acquittal shall lie under sub-section (1). It follows that on an appeal under sub-section (1) of section 378, which has not arisen from a case instituted upon complaint, sub-section (5) will have no effect. In other words, the words 'in every other case' used in sub-section (5) do not cover cases not instituted upon complaint—*State v. Pyare Lal Nehru* 1976 Cr. LJ 81.
6. *Release on bail pending disposal of appeal.*—The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Court and in the Supreme Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. The Supreme Court therefore observed in *Kashmira Singh v. State of Punjab* AIR 1977 SC 3147 that as long as the Supreme Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in case where special leave has been granted to the accused to appeal against his conviction and sentence—See also *Babu Singh v. State of U.P.* AIR 1978 SC 527.
7. *Power of Court to grant bail in a case committed on appeal.*—Where the Supreme Court had admitted an appeal and issued an order to the Sessions Judge to issue non-bailable warrant for the arrest of the respondents, the Code is not applicable. There is no provision akin to section 390, which enables the Court before which the accused is committed in an appeal against acquittal by the orders of the High Court to release the accused on bail. The High Court is also not in a position to construe the order of the Supreme Court as a direction to it to grant bail pending further orders of the Supreme Court—*In re. Gopalakrishna Naidu* 1976 Mad. LJ (Cr.) 439.

CHAPTER XXX

REFERENCE AND REVISION

Reference to High Court.

395. (1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation : In this section, "Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

(2) A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

Disposal of case according to decision of High Court.

396. (1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose of the case conformably to the said order.

(2) The High Court may direct by whom the costs of such reference shall be paid.

Calling for records to exercise powers of revision.

397. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation : All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Power to order inquiry.

398. On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204, or into the case of any person accused of an offence who has been discharged :

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Sessions Judge's powers of revision.

399. (1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Power of Additional Sessions Judge.

400. An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

High Court's powers of revision.

401. (1) In the case of any proceeding the record of which has been called for itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

Power of High Court to withdraw or transfer revision cases.

402. (1) Whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide having regard to the general convenience of the parties and the importance of the questions involved, which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the applications for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the Sessions Judge.

(2) Whenever any application for revision is transferred to the High Court, that Court shall deal with the same as if it were an application duly made before itself.

(3) Whenever any application for revision is transferred to the Sessions Judge that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or to any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Sessions Judge.

Option of Court to hear parties.

403. Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision ; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.

Statement by Metropolitan Magistrate of grounds of his decision to be considered by High Court.

404. When the record of any trial held by a Metropolitan Magistrate is called for by the High Court or Court of Session under section 397, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue ; and the Court shall consider such statement before overruling or setting aside the said decision or order.

High Court's order to be certified to lower Court.

405. When a case is revised under this Chapter by the High Court or a Sessions Judge, it or he shall, in the manner provided by section 388, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified ; and, if necessary, the record shall be amended in accordance therewith.

NOTES

*Reference to Court of Session in sub-section (2).—*Sections 395 and 396 correspond to sections 432 and 433 of the old Code respectively. In sub-section (2)

of section 395, a reference has been added to Court of Session so that the facility of making a reference in respect of any question of law not involving any question of the validity of a statutory provision is extended to Sessions Judges and all Metropolitan Magistrates and not restricted only to Presidency Magistrates as under the old Code.

Changes in revisional provisions of old Code.—Sections 397 to 405 which deal with revision petitions correspond to sections 435, 436 and sections 438 to 442 of the old Code. The changes made in the old provisions are given below :

1. *Revision power only to Court of Session.*—Powers of revision at the district level are given only to the Court of session and to no other Magistrate's Court [section 397(1)]. Sessions Judge will finally dispose of all revision cases taken up by them [section 399(1)]. As observed by the Joint Committee of Parliament, "this will not only conduce to the convenience of parties but also secure expedition in the disposal of cases."
2. *Interlocutory orders excluded from revision petitions.*—Interlocutory orders are specifically excluded from being subject of revision petitions [section 392(2) (new)]. The genesis of this exclusion is :

"At present, the High Court can interfere in revision in respect of interlocutory orders also. When petitions are filed in this regard, the proceedings in the lower court are in most cases stayed in the lower court and this holds up matters until the disposal of the revision petition. It may be that at one stage it was considered that the facility of having a wrong or unjust order struck down by the High Court was a guarantee against even the slightest injustice at any stage of a criminal proceeding. But experience has shown, particularly during recent years, that this facility has been so extensively abused that it has become a major factor delaying disposal of criminal cases not only for months but for years. There are instances where cases have been held up for as long as five years by reason of the stay order during the pendency of a revision petition against some interlocutory order or the other. This facility is availed of mostly by the rich men, industrialists, corrupt officials and the like who are able to delay disposal of cases against them almost indefinitely. Meanwhile some of the witnesses die or lose interest in the case and sometimes even the prosecution loses its keenness. These revision petitions against interlocutory orders, therefore, not only delay justice but sometimes defeat it. Interlocutory orders are, therefore, specifically excluded. This change is not likely to result in any injustice. The subordinate courts, after separation of the Judiciary from the Executive, will be manned by judicial officers who may be expected to act strictly according to law. Further, if a magistrate has a pronounced tendency to pass wrong orders in the course of criminal proceedings, the powers of superintendence given to superior courts would be used to correct such tendency."

3. *Application for revision to Sessions Judge or High Court.*—If an application for revision is made by a party either to the Sessions Judge or to the High Court, it has been provided that no further application should be entertained by the other of them [New section 397(3)].
4. *Order of Sessions Judge final.*—The order of the Sessions Judge in revision will be final and no further revision by the High Court will be permitted [New section 399(3)].
5. *Sentencing limitation in regard to revisional powers.*—"The ordinary rule in respect of an appellate court is that it cannot impose a sentence heavier

than the trial court could have done”—*Jagat Bahadur* AIR 1966 SC 945. The same limitation has been applied in regard to revisional powers of the High Court. This has been provided in new section 401(1). As both the High Court and the Court of Session will have, under section 386, power to enhance a sentence on proper appeal, the words “and may enhance the sentence” occurring in old section 439(1) have been omitted.

6. *No dismissal of revision application due to appeal being open.*—A new provision has been made that after the commencement of the hearing of any revision application it should not be dismissed merely on the ground that an appeal was open and should have been filed by the party, if the Court is satisfied that the appeal was not filed due to erroneous belief and that it is otherwise in the interests of justice to continue the proceedings [New section 401(5)].
7. *Contingency where one of several accused moves High Court and any other moves Sessions Court.*—In case, one of several accused persons moves the High Court and any other accused person moves the Sessions Court on the same matter in revision, the High Court will decide which of the two Courts may deal with the matter, having regard to the general convenience of the parties and the importance of the questions involved; and thereupon all proceedings in respect of the same matter pending in the other court will stand transferred [New section 402].

Some Judicial decisions on revision provisions.—The changes made in the revision provisions have been summarised above. The provision regarding revision (sections 397, 399 and 401) has come up for judicial interpretation. This important provision is discussed in detail below with reference to judicial decisions.

SECTIONS 397 AND 399

1. *Object of provisions.*—As pointed out in *Amar Nath v. State of Haryana* AIR 1977 SC 2185, the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in appeal, inquiry, trial or other proceeding is to bring about final disposal of the cases expeditiously.
2. *Meaning of ‘interlocutory order’.*—Ordinarily and generally the expression ‘interlocutory order’ has been understood and taken to mean as a converse of the term ‘final order’. In volume 22 of the third Edition of Halsbury’s Laws of England, however, it has been stated: ‘In general a judgment or order which determines the principal matter in question is termed ‘final’ (page 742). An order which does not deal with the final rights of the parties, but either (i) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (ii) is made after judgment and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed ‘interlocutory’. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals. But an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it would render almost nugatory the revisional power of the court conferred by section 397(1) and only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not appear to be the intention. On the one hand, the legislature kept intact the

revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation the intention of the legislature does not appear to equate the expression 'interlocutory order' as being converse of the words 'final order'. An order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of section 397(2). In the instant case the impugned order had rejected the application challenging the Court's jurisdiction to proceed with the trial. Although it might not be final in one sense, it was surely not interlocutory so as to affect section 397(2). It was held to be an order of the type falling in the middle course *i.e.* neither purely final nor simply interlocutory—*Madhu Limaye v. State of Maharashtra* AIR 1978 SC 47.

In *Parmeshwari Devi v. State* AIR 1977 SC 403, it has been observed that the purpose of section 397(2) is to keep an interlocutory order (*i.e.* an intermediate order made during the preliminary stages of an inquiry or trial) outside the purview of power of revision so that the enquiry or trial may proceed without delay. This is not likely to prejudice the aggrieved party for it can always challenge it in due course if the final order goes against it. But it does not follow that if the order is directed against a person who is not a party to the inquiry or trial and who will have no opportunity to challenge it after a final order is made affecting the parties concerned, he cannot apply for its revision even if it is directed against him and adversely affects his rights. In holding this, the Court applied the ratio in *Mohanlal Maganlal Thacker v. State of Gujarat* AIR 1968 SC 733 that 'an interlocutory order, though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals'.

3. *Scope, ambit and connotation of 'interlocutory order'.*—The Supreme Court considered the scope, ambit and connotation of the word 'interlocutory order' as appearing in section 397(2) which bars any revision of such an order by the High Court, in *Amar Nath v. State of Haryana* AIR 1977 SC 2185 after narrating the historical background of the provision, the Court observed that the section was incorporated in the Code with the avowed purpose of cutting out delays and ensuring that the accused persons got a fair trial without much delay and the procedure was not made complicated. Its paramount object was to safeguard the interest of the accused.

Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. In section 397(2), the term 'interlocutory order' has been used in a restrictive sense and not in any broad or artistic sense. It merely denotes order of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in section 397 of the Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under section 397. But orders which are matters of importance and affect or adjudicate the rights of the accused or a particular aspect of the trial cannot

be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

The tests or incidents of an interlocutory order have been laid down in *Central Bank of India v. Gokal Chand* AIR 1967; SC 799; *Mohanlal Maganlal Thacker v. State of Gujarat* AIR 1968 SC 733; *Baldevdas v. Filmistan Distributors (India) Pvt. Ltd.* AIR 1970 SC 406; *Standard Glass Beads Factory v. Shri Dhar* AIR 1960 All. 692; *Union of India v. Khetra Mohan Banerjee* AIR 1960 Cal. 190; *Gokal Chand v. Sanwal Das* AIR 1920 Lah. 326; *Begum Aftab Zamani v. Shri Lal Chand Khanna* AIR 1969 Delhi 85; and *Har Parshad Wali v. Naranjan Nath Matoo* AIR 1959 J & K 139.

Applying the aforesaid tests, the Supreme Court held in *Amar Nath v. State of Haryana* AIR 1971 SC 2185, that if the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind could not be held to be an interlocutory order but one which decided a serious question as to the rights of the appellants to be put on trial. That being the position, a revision against this order was fully competent under section 397(1) or under section 482 of the Code, because the scope of both these sections in a matter of this kind is more or less the same.

4. *Forum—Sessions Court or High Court.*—Under section 397, if a person chooses to go before the Sessions Judge he cannot thereafter go before the High Court even if the Sessions Judge rejects his revision application. To compel a person, under a rule or practice, first to approach the Sessions Judge and not the High Court would result in the destruction of the right of the person to move the High Court under section 397—*Puvvula Abbulu v. State* 1975 Cr. LJ 139. Section 397 gives power to both the courts simultaneously and on the wording of the section, a party is not precluded from moving any of them. The party can, in other words, avail of any of the two remedies but not both—*Madhavlal v. Chandrashekar* 1976 Cr. LJ 1604. The High Court cannot in view of section 397(2), refuse to entertain a revision petition on the ground that the Sessions Judge has not been moved before the High Court is approached—*Brahmachari Satyanarayan Maharaj v. Kantilal Dave* 1976 Cr. LJ 1806, see also *Sri Ram v. Panna Lal* ILR 1976 II Delhi, 401.

However, in *Joseph Abraham v. Thankamma* ILR 1975 II Kerala 239, a contrary view has been taken. It is held there that the legislative intent of section 397(3) is to make the Sessions Judge, as far as possible, the final court of revision. Section 399(3) has made the order of the Sessions Judge final, and to allow a party to come to the High Court direct would be to completely defeat the purpose of that section. If every party comes to the High Court direct, ignoring the Sessions Judge, then section 399(3) becomes unnecessary.

5. *Revision application on an interlocutory order passed in a pending trial.*—Revision is not as a matter of right. Section 397(2) does not therefore affect any right. Revision application therefore cannot be regarded as a continuation of the proceeding in a trial court. Consequently, no revision application in respect of an interlocutory order passed in such a trial is maintainable—*Suraj Prakash v. R.K. Gurnani* 1975 Mah. LJ 588. Both the contentions that the revision is a right vested in a litigant and so cannot be taken away by new Code and revision is a proceeding in continuation of the previous proceeding are untenable in view of the enunciation of the law by the Supreme

Court in *Pranab Kumar Mitra v. State of West Bengal* AIR 1959 SC 114. Therefore, where a revision petition by a person is dismissed by the Sessions Judge before 1-4-1974, his order is final and there cannot lie a second revision petition by the same person before the High Court as the power of revision vested in the High Court does not create any right in favour of such person—*Goudappagowda v. Basavarajappa* ILR 1975 Kar. 1149.

On the same principle, a revisional application presented after 1-4-1974, in respect of an interlocutory order passed in a pending proceeding is not entertainable—*Mohan Sundar Das v. Khetrabashi Das* ILR 1976 Cutt. 423. To say that the bar contained in sub-section (2) applies only to the interlocutory orders passed in the proceedings commenced after coming into force of the new Code would be doing violation to the language of the section which is not at all ambiguous—*Chirnajilal Ramjibhai v. Chunarmal Motiram* 1976 Cr. LJ 43.

6. Maintainability of revision applications—propositions stated.—The following position, therefore, emerges from the cases as regards maintainability of revision petitions :—

- a. Revision petition in a pending trial filed after the coming into force of the new Code is not a continuation of old proceedings.
- b. Revision petition is governed by the new Code—*Dhanraj Jain v. B.K. Biswas* 1976 Cr. LJ 1297.
- c. An appeal can be filed as of right but not a revision petition against interlocutory order—*Bitthal v. State* 1976 Cr. LJ 735.
- d. Revision arising against the order governed by the old Code will not be saved under section 484(2). The new Code applies—*Baggasingh v. State of H.P.* 1977 Cr. LJ 301 ; *Suraj Prakash v. R.K. Gurnani* 1975 Mah. LJ 588.
- e. Revision not being vested right, provisions regarding revisional jurisdiction under the old Code cannot be invoked—*Madhavlal v. Chandra-shekar* 1976 Cr. LJ 1604.
- f. Where the second revision in the High Court was filed before the new Code it was held that it was so maintainable—*Koya v. Muthukoya* 1976 Mad. LJ 539.
- g. Section 484 does not save any right of a litigant to file a revision—*Yudao-rao v. State of Maharashtra* 1976 Cr. LJ 751. However, in *Narain Mahton v. Mahesh Prasad* 1975 Cr. LJ 1400, a contrary view has been expressed holding that revision petition is maintainable in respect of proceedings commenced in 1970 i.e. much before the coming into force of the new Code.

7. Interlocutory orders—Illustrations. The following have been held to be interlocutory orders and therefore not subject to revision :

- a. *Order to frame charge.*—Since it does not decide the question of guilt or innocence of the accused. The order merely keeps the proceedings alive. Hence powers of High Court cannot be exercised in relation to such an order—*Bhupinder Kumar v. State* 1975 Cr. LJ 1185, see also *Biswanath Agarwal v. State* 1976 Cr. LJ 1970 ; *Dhanraj Jain v.*

B.K. Biswas 1976 Cr. LJ 1297 and *Sultanuddin Ahmed v. Abdul Salam Dewar* 1977 Cr. LJ Note No. 380 at 1010 and 1011-12.

- b. *Show-cause order requiring execution of bond for keeping the peace under section 111.*—Since it is passed only on certain information received by the Magistrate. The Magistrate simply calls upon the concerned person to show cause why he should not be bound down. Parties' rights are not decided at that stage nor the disputed matter finally disposed of—*Bindabashi v. State* 1976 Cr. LJ 1660.
- c. *Order refusing application for summoning a witness.*—Since an order for summoning of witnesses is made at an intermediate stage between the commencement and the end of a criminal case. Order refusing application for summoning witnesses in a proceeding under section 145 for the cross-examination fulfils all the characteristics of an interlocutory order—*Santlal v. Krishna Lal* 1976 Cr. LJ 215; *Mohan Sundar Das v. Khetrabashi Das* ILR 1976 Cutt. 423 and *Bhim Naik v. State* 1975 Cr. LJ 1923.
- d. *Order under section 145.*—Since it is passed in a pending petition and is preliminary only—*Amarnath v. Joginder Singh* 1976 Cr. LJ 394; *Ramjanali Shahabuddin v. Nasim Khan Munshikhan* 1976 UCR (Bom.) 406.
- e. *Order of attachment under section 146.*—Since it is in the nature of *ad interim* order in the sense that property remains under attachment till the dispute with regard to rights of parties is decided by a competent court—*Syed Ahmed v. Rais Ahmed* 1977 Cr. LJ 450.
- f. *Order of the Magistrate under section 156(3).*—Since it is an interlocutory order passed by the Magistrate in the inquiry into the complaint given by the police—*B.S. Rao v. T.V. Sharma* 1976 Cr. LJ 902 and *Nathan v. Naithinath* 1975 Cr. LJ 994.
- g. *Order summoning an accused under section 204.*—Since it is made at an intermediate stage between the commencement and the end of a criminal case—*Swaran Anand v. CJM* 1977 Cr. LJ 535 following *Sant Lal* and *B.S. Rao*, *ibid.*
- h. *Order to commit under section 309*—*Bitthal v. State* 1976 Cr. LJ 735.
- i. *Order extending pardon under section 309.*—Since it is in relation to a trial and even after conclusion of the trial in an appeal it is open to an accused person to question the correctness and impropriety of the pardon extended to a person. It is also open to challenge the statement of approver. No finality is reached if pardon is extended. The rights of the parties are not conclusively decided by order of tender of pardon—*Krushnalal Gulati v. State* 1976 Cr. LJ 1825.
- j. *Order granting or refusing bail under section 438.*—Since it does not decide the cause itself. It is decidedly a step to assist the court in arriving at a determination of the case before it. The question pertaining to bail no doubt arises out of the proceeding itself. It is necessary to be decided to set at rest the controversy as to the presence of the accused at each day of hearing. But granting or refusing bail will not affect the decision of the case. It will depend upon its own merit and a person under arrest can always be discharged or acquitted. It is no doubt, therefore,

an interlocutory order which is passed during the progress of action. In *Sawal Ram Goenka v. State* AIR 1961 Cal. 169 which was considering article 134(1)(c) of the Constitution, an order granting or refusing bail was considered an interlocutory order—*Jogender Singh v. State of U.P.* ILR 1975 HP 81; see also *K.P. Vasu v. State* AIR 1975 Ker. 15.

k. *Order refusing to release property under section 451.*—Since it is passed during the pendency of the proceeding for the preservation and protection of the property which is to be utilised for the final determination of the proceeding—*Nathulal v. State* 1975 Cr. LJ 358.

8. *Final Orders—Illustrations.*—The following have been held as final orders so that the bar imposed by section 397(2) does not apply to such orders :

a. *Order allowing cross-examination of a witness summoned to produce a document under section 94(1).*—A person does not become a witness unless summoned as such. The mere fact that a person produces a document, he cannot be cross-examined unless and until he is called as witness. The order of the Magistrate allowing such person to be cross-examined is not according to law and it adversely affects the appellant, who was not a party to the inquiry or trial. As is obvious, after the order of cross-examination there would be no opportunity to challenge it; a belated challenge would be purposeless—*Parmeshwari Devi v. State* AIR 1977 SC 403.

b. *Final order under section 145.*—By virtue of orders passed by the Executive Magistrate, the proceedings under section 145 have been disposed of and nothing remains to be done in that proceeding—*Champalal Sagarmal Khimwat v. Rupchand S. Jain* 1976 UCR (Bom.) 400.

c. *Order under section 210.*—Section 210 empowers the court to stay the proceedings initiated on the basis of a complaint when there is investigation going on for the same offence against the same party on a report to the police. The dismissal of an application under section 210 which is altogether an independent action, amounts to adjudication of the case finally in so far as the relief for stay is concerned. It is a relief sought by an independent application—*Bhimi Ram v. Loharu Ram* ILR 1975 HP 824.

d. *Order under section 167.*—When a Magistrate passes an order on an application for bail by the accused made after sixty days of his arrest on failure of the prosecution to put up a charge-sheet within that time, there is determination of the right of the accused finally as to whether he is entitled as a matter of right to be released on bail. This determination can be done only by the Magistrate before the filing of the charge-sheet and that decision can be final—*Ramsharan v. State of Maharashtra* 1976 Mah. LJ 432.

e. *Order under sections 457 and 458.*—The two sections contemplate both final and temporary orders in regard to the disposal of seized property. Order directing disposal of property passed during investigation of a crime are independent functions discharged by a Magistrate and it may be in itself a judicial proceeding in the wider sense of the word—*P.J. Zacharia v. State of Kerala* 1976 KLT 158.

f. *Order of discharge of accused.*—Where the accused were committed by the Magistrate to Sessions Judge to frame charge under sections 302 and

342 of IPC and the Sessions Judge discharged the accused for an offence under section 302 IPC, held that the order of discharge put an end to the case in so far as an offence under section 302 was concerned, and so it was not an interlocutory order—*State of HP v. S.H. Harbans Singh* 1976 Cr. LJ 894.

9. *Orders passed without jurisdiction.*—An order passed without jurisdiction is no order at all although it is in the nature of an interlocutory order. Such an order is nullity—*Satyabrata v. Jarnal Singh* 1976 Cr. LJ 446 ; *Deena Nath v. Doitari Charan*, 1975 Cr. LJ 1931. For instance an order calling for execution of an interim bond under section 117(3) before commencement of inquiry—*Bhim Naik v. State* 1975 Cr. LJ 1923 ; or an order by the EM relying on an order of city civil court without following the correct procedure as prescribed by the Code—*Champaklal Sagarmal Khimwat v. Rupchand Jain* 1976 UCR (Bom.) 400, are orders without jurisdiction. Section 397(2) has no application to such order. They are revisable and can be interfered with.
10. *Interlocutory orders and High Court's inherent powers.*—The inherent power of the High Court cannot be invoked under section 482 to do what section 397(2) expressly prohibits. To permit interference in a matter which has been prohibited expressly would defeat the intention of the legislature. Under section 482 the High Court will only interfere in an extraordinary case where special circumstances are made out which rendered the order inherently illegal so that the abuse of the process of the court is *prima facie* made out—*Amar Nath v. Jogender Singh* 1976 Cr. LJ 394 ; *Rajanikanta Mehta v. State of Orissa* 1976 Cr. LJ 1674. There can be no abuse of process when revision itself is not permissible under section 397—*Nirmala Chauhan v. Vinod Sharma* ILR 1975 HP 355.

However, there may be extraordinary cases in which the view taken by the lower courts is so absurd and shocking to the judicial conscience that the court may be inclined to invoke its inherent powers to secure ends of justice. But certainly these powers cannot be invoked in a manner that the effect would be just entertaining as second revision which has been expressly barred under section 397—*Mangal Singh v. Dalvindra Kaur* 1976 Cr. LJ 1824 ; *Bandi Surappa v. State* 1976 Mad. LJ (Cr.) 543. The inherent jurisdiction is not the same thing as the appellate or revisional. The use of the words 'no further application' occurring in section 397(3) has the effect only of restricting the revisional power because the words 'no further application' can have reference only to an application in revision. Similarly what is barred by section 399(3) is 'further proceeding by way of revision' and not an independent proceeding under section 482. In short, the power under section 482 stands intact and unaffected by sub-section (3) of sections 397 and 399—*Sarju v. Babadin* 1975 Cr. LJ 1562.

11. *Section 397 whether conflicts with article 227 of the Constitution.*—Under article 227 of the Constitution, the High Court has a supervisory and an appellate jurisdiction. An error of law apparent on the face of the record is subject to correction by the High Court exercising its power. The exercise of this power, however, does not justify interference with concurrent findings of fact. When exercising its powers under section 397, the High Court can consider the correctness, legality or propriety of any pending sentence or order, recorded or passed, and the irregularity of any proceedings of such inferior court. There is, thus, no conflict real or apparent between the provisions of

section 397 and article 227 of the Constitution—*In re. Govind Naicker* 1976 Cr. LJ 1135. Although, however, revision against an interlocutory order is specifically barred under the Code, in an appropriate case, article 227 can be applied—*Roshanlal v. State of H.P.* ILR 1975 HP 531. For instance, if the order passed is void as where in a proceeding under section 145 the Magistrate orders restoration of possession while passing the preliminary order, it cannot be allowed to stand. The High Court can in such case exercise its jurisdiction under article 227 of the Constitution—*Kishor Chandra Mishrilal v. R.B. Chumkal* 1976 Mah. LJ Note No. 1. The only positive view to take in the matter is that the provisions of section 397(2) cannot be circumvented or by-passed by article 227 of the Constitution—*Issaq Mahboob v. V.N. Kelagaonkar* 1976 Cr. LJ 1856.

12. Second revision not maintainable.—Sub-section (3) of section 399 is mandatory. In other words, when an application is made by a person against an order passed by a Magistrate before the Sessions Judge the order of the Sessions Judge shall be final. Another application made by the same person shall not be entertained by the High Court. Under sub-section (3), the High Court is debarred from entertaining an application made by the same person against the same order—*Joy Chandra Borkotoki v. State of Assam* 1977 Cr. LJ 101. The following are the instances where the second revision applications are held as not maintainable.

- a. Magistrate directing husband to pay maintenance to wife. Husband filed revision before the Sessions Judge. It was dismissed as not pressed. Further revision by husband before High Court is not maintainable—*Mohammed Khan Hanif Khan v. Shamim Begum* 1977 Cr. LJ 116.
- b. Where a revision petition is dismissed by the Sessions Judge the order is final and no second revision petition lies before the High Court because under the new Code the Sessions Judge has the power to finally dispose of the revision petitions and not merely make a recommendation to the High Court which was the position under the old Code—*Chhail Das v. State of Haryana* 1975 Cr. LJ 129.
- c. The bar of a second revision under section 399(3) cannot be obviated or circumvented by styling the applications as a miscellaneous one—*Deena Nath v. Daitari Charsan* 1975 Cr. LJ 1931.
- d. The bar in section 397(3) applies also to a case where the second revision petition has been filed after the commencement of new Code—*Surinder Singh v. Inder Sain* ILR 1974 HP 660.
- e. The offences alleged were committed and cognizance was taken under the old Code. A revision petition was filed in the Court of Session. The Court confirmed the Magistrate's order of discharge and rejected the revision application. A second revision petition was filed in the High Court against the order of the Sessions Judge. Held that the revision petition was not maintainable in view of section 397(3)—*B.B. Patil v. D.B. Patil* 1976 Cr. LJ 1872.

13. Second Revision when maintainable.—In the following cases, second revision petitions have been held to be maintainable :

- a. The bar does not operate against a person who was opposite party in the Sessions Court and the revision before the Sessions Judge having been allowed he comes up to the High Court in revision. This revision will

not be a second revision by him, because he having succeeded before the Magistrate had no cause to come up in revision before the Sessions Judge. Therefore, his application cannot be deemed to be a further application by the same person who filed a revision before the Sessions Judge—*Damodar Panigrahi v. Bachhanidhi Panigrahi* 1977 Cr. LJ 142.

- b. SMD passed an order under section 146. The aggrieved party filed a revision application. Held, a revision unlike an appeal is not a continuation of old proceeding. As the proceeding under section 146 terminated as soon as the SDM passed the order, section 484 would not bar the filing of a revision under section 397—*Shaukat Ali v. Sadaquat Ali* 1977 Cr. LJ 460.
 - c. Where the Sessions Judge rejects the first revision application on the ground that the impugned order is an interlocutory one and the applicant files revision in the High Court, the said revision in High Court is not barred—*Ramsaran v. State of Maharashtra* 1976 Mad. LJ 432.
 - d. The bar does not apply to pending cases which will be governed by the old Code. A second revision to the High Court under section 439 of the old Code is therefore competent in cases pending on 1-4-1974—*Dhruvanath Singh Ramsuratsingh v. Sivanarsh Sharma* 1975 MP LJ 409.
14. *Some words explained.*—‘Inferior’ in section 397(1): The word ‘inferior’ does not imply that the court is under the administrative orders of the superior court. A court is ‘inferior’ to another court when an appeal lies from the former to the latter—*R.P.P. Sawant v. Jambheshwar Patra* [1975] 41 CIT 661. ‘Called for himself’ in section 399(1): Section 399(3) contemplates an application for revision being made before a Sessions Judge on behalf of any person and exercise of powers under section 399. The words ‘called for himself’ do not mean *suo motu*. There is no warrant to attribute such a restrictive meaning to these words—*P. Siddegowda v. K. Siddegowda* [1976] Mad LJ (Cr.) 371.
15. *Powers can be exercised suo motu.*—The revisional powers can be exercised by the High Court *suo motu*. It is only a matter of practice that on the application by a party the High Court exercises its revisional jurisdiction. It may be brought to the notice of the High Court either by an application or by a press report or by the returns submitted by the lower courts or in any other manner. Merely because the defect is brought to the notice of the High Court by an application, that does not confer any right on any party. No party can claim any vested right either in procedure or in practice—*Mohan Sundar Das v. Khetrabasi Das* ILR 1976 Cutt. 423.
16. *Power to act suo motu for enhancement of sentence.*—As has been observed by the Supreme Court in *Nadir Khan v. State* AIR 1976 SC 2205, the provisions under section 401 read with section 386(c)(iii) are clearly supplemental to those under section 377 whereby appeals are provided for against inadequacy of sentence at the instance of the State or the Central Government, as the case may be. It is true that the new Code has expressly given a right to the State under section 377 to appeal against inadequacy of sentence which was not there under the old Code. That however does not exclude revisional jurisdiction of the High Court to act *suo motu* for enhancement

- of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court. The Supreme Court will be slow to interfere with exercise of such discretion under article 136 of the Constitution. In issuing a notice for enhancement of sentence in an appeal the High Court would not be acting in its appellate powers under section 386 but would be acting under section 401. The words 'and may enhance the sentence' occurring in old section 439 have been omitted from section 401. Since inadequacy of sentence is purely discretionary, and the sentence passed is illegal, the High Court can certainly interfere in revision for the purpose of satisfying itself about the legality of the sentence as laid down in section 397(1)—*E.E. Sutari v. State of Maharashtra* 1975 Mah. LJ 772.
17. *Defective revision application*.—The omission of the accused to mention material facts in the revision petition may not be considered to be such a default as would disentitle him to be heard on merits—*P.N. Khanna v. Sarwansingh* [1976] 78 Punj. LR 242.
18. *Opportunity of giving hearing*.—There is no right vested in a party to file a revision application. It is court's discretion to give him a hearing *i.e.* call upon the parties to such application to attend the hearing of the application. In proceedings under section 145, there is no complainant and there is also no accused. Therefore, the obligation imposed upon the court to give an opportunity to the accused to be heard cannot apply to the proceedings under section 145—*Mohan Sundar Das v. Khetrabashi Das* ILR 1976 Cutt. 423.
19. *Remission in sentence*.—A sentence of life imprisonment would enure till the life of the accused. Any remission granted in the sentence under prison rules cannot be a substitute for a sentence for life. Such remission is only within the domain of the appropriate Government. The effect of the life term cannot be stultified by remissions. The prisoner cannot be released automatically on the expiry of 20 years—*State of M.P. v. Ratan Singh* 1976 Cr. LJ 1192.
20. *Revision when no appeal*.—The appellate court disbelieved one witness examined by the accused at first appeal stage. The accused filing revision cannot ask revision to be treated as appeal. There cannot be reassessment of evidence as such witness would have been examined by him during the trial—*Fulchand Mutha v. D.R. Naik* 1976-77 Mah. Cr. R. 230.

CHAPTER XXXI

TRANSFER OF CRIMINAL CASES

Power to Supreme Court to transfer cases and appeals.

406. (1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant

is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.

NOTES

No special provision in regard to re-trial of case transferred by Supreme Court.—This section corresponds to section 527 of the old Code. Sub-section (3) of the old section 527 provided that the court to which a case had been transferred under that section might act on the evidence already recorded by the former court unless the accused demanded a re-trial. This special provision has been omitted so that the position as regards re-trial of the case after the transfer by order of the Supreme Court will be exactly the same as in a transfer under any other provision of the Code.

No power to transfer investigations.—Section 406 contemplates the transfer of proceedings from one court to another. It does not confer on the court the power to transfer investigations from one police station to another in the country simply because the FIR is forwarded to a court. In a case where the accused is asked to appear in a far-off court during the investigatory stage, he can move the court for appropriate orders—*Ram Chander v. State of T.N.* AIR 1978 SC 475.

Power of High Court to transfer cases and appeals.

407. (1) Whenever it is made to appear to the High Court—

- (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order—

- (i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence ;
- (ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ;
- (iii) that any particular case be committed for trial to a Court of Session ; or
- (iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative :

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made ; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose :

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.

NOTES

This section corresponds to section 526 of the old Code. The changes made in the old provisions are indicated below :

Minor matter omitted.—One of the grounds on which the High Court could, under old section 526(1)(c), order transfer of a case was “that a view of the place in or near which an offence has been committed may be required for the satisfactory inquiry into or trial of the same”. This, being a minor and unimportant matter, has been omitted. In any case this is covered by the more general provision in clause (c) of section 407(1) (new).

In view of the abolition of commitment proceedings as such, clause (iii) has been worded in the present form.

No adjournment merely on intimation to file appeal.—Sub-sections (8), (9) and (10) of old section 526 under which a subordinate court was bound to stop all proceedings on the mere intimation by an interested party that it intended to apply to the High Court or the Court of Session for transfer of the case, had been subject to “gross abuse”. On several occasions, the provisions contained in those sub-sections had come in for scrutiny and criticism. The Law Commission examined all these and recommended that these sub-sections which provide for a mandatory stay in trial and appeals should be deleted in the new Code.

The Joint Committee of Parliament was, however, of opinion that the provisions as regards compulsory adjournment of proceedings on the intimation by a party of his intention to move for transfer [as contained in sub-sections (8), (9) and (10) of section 526 of the old Code] should be retained with an additional precaution for payment of costs of the opposite party when the Court considers it necessary. The Committee was convinced that “the omission of those provisions was prejudicial to the interest of the parties and might even entail miscarriage of justice”.

The Rajya Sabha, however, at the stage of the passage of the Code, omitted these sub-sections as, it was considered, they were “obstructive of justice”. The Minister of State in the Ministry of Home Affairs, who moved the amendment for deletion of these sub-sections observed :

“It will speed up the processes of trial. Many times people with resources resort to these stratagems because a poor man who is not properly represented would not resort to these stratagems for extending the trial. It is only the resourceful people, people with money, people with legal knowledge, resort to such things and.....we should not be a party to such procedural stratagems which might indefinitely postpone the trial.” [*Rajya Sabha Debate dated 13-12-1972.*]

Compensation amount raised.—The maximum compensation that can be awarded by a High Court has been raised from Rs. 250 [in the old section 525(6)] to Rs. 1000.

Old section 526A regarding transfer of cases of military personnel has been omitted as obsolete after Independence.

Direct application to High Court in certain cases.—An application made directly to the High Court to commit a case pending before a Magistrate to the Court of Session on the ground that it was only a counter case of another case pending before the Sessions Judge is maintainable. The contention that the Sessions Judge was not moved before moving the High Court is not tenable because there is no provision in the Code for Sessions Judge to direct commitment of cases pending before subordinate Magistrate to the Sessions Judge. The proviso to section 407(2) will not apply to such cases. Section 408 regarding power of Sessions Judge to transfer cases also does not apply. The High Court can exercise such power under section 407(1)(c)(iii) and that power is not limited to cases triable by Sessions Court only—*Gundi Sahu v. State of Orissa* 1975 Cr. LJ 1392.

Power of Sessions Judge to transfer cases and appeals.

408. (1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order

that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of section 407, except that sub-section (7) of that section shall so apply as if for the words "one thousand rupees" occurring therein, the words "two hundred and fifty rupees" were substituted.

Withdrawal of cases and appeals by Sessions Judges.

409. (1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him.

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(3) Where a Sessions Judge withdraws or recalls a case or appeal under sub-section (1) or sub-section (2), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be.

Withdrawal of cases by Judicial Magistrates.

410. (1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) Any Judicial Magistrate may recall any case made over by him under sub-section (2) of section 192 to any other Magistrate and may inquire into or try such case himself.

Making over or withdrawal of cases by Executive Magistrates.

411. Any District Magistrate or Sub-divisional Magistrate may—

- (a) make over, for disposal, any proceeding which has been started before him, to any Magistrate subordinate to him;
- (b) withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and dispose of such proceeding himself or refer it for disposal to any other Magistrate.

Reasons to be recorded.

412. A Sessions Judge or Magistrate making an order under section 408, section 409, section 410 or section 411 shall record his reasons for making it.

NOTES

Sections 408 to 412 have been made of by splitting the composite section 528 of the old Code.

Power to award compensation in case of vexatious applications.—Sessions Judges can order, under section 408 transfer of cases *suo motu* or on the report of the lower court. The Sessions Court has also been empowered to award compensation up to Rs. 250 in cases of frivolous or vexatious transfer applications. In view of the provision that appeals from convictions by Magistrates of the second class might be heard by the Chief Judicial Magistrate [section 381(1)], the Sessions Judge has been empowered to transfer a particular appeal from the Court of the Chief Judicial Magistrate to himself and decide the appeal.

CJM's power to transfer cases.—The Chief Judicial Magistrate has also been empowered in section 410 to transfer cases from one subordinate court to another.

Sessions Judge to record reasons for withdrawal of cases.—Sub-section (5) of old section 528 provided that a Magistrate making an order of withdrawal of a case should record his reasons in writing for making the same. This provision has now been made applicable, under section 412, to orders of a Sessions Judge recalling, withdrawing or transferring a case or appeal.

CHAPTER XXXII

EXECUTION, SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES

A. Death sentences

Execution of order passed under section 368.

413. When in a case submitted to the High Court for the confirmation of a sentence of death, the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Execution of sentence of death passed by High Court.

414. When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant.

Postponement of execution of sentence of death in case of appeal to Supreme Court.

415. (1) Where a person is sentenced to death by the High Court and an appeal from its judgment lies to the Supreme Court under sub-clause (a) or sub-clause (b) of clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until the period allowed for preferring such appeal has expired, or, if an appeal is preferred within that period, until such appeal is disposed of.

(2) Where a sentence of death is passed or confirmed by the High Court, and the person sentenced makes an application to the High Court for the grant of

a certificate under article 132 or under sub-clause (c) of clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until such application is disposed of by the High Court, or if a certificate is granted on such application, until the period allowed for preferring an appeal to the Supreme Court on such certificate has expired.

(3) Where a sentence of death is passed or confirmed by the High Court, and the High Court is satisfied that the person sentenced intends to present a petition to the Supreme Court for the grant of special leave to appeal under article 136 of the Constitution, the High Court shall order the execution of the sentence to be postponed for such period as it considers sufficient to enable him to present such petition.

Postponement of capital sentence on pregnant woman.

416. If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to imprisonment for life.

NOTES

Section 413.—The section corresponds to section 381 of the old Code. There is no change in substance of the old section.

Execution of death sentence under section 414.—This is a new provision in regard to execution of death sentence passed by High Court. The old Code did not make any specific provision in the matter but left it to be governed by sections 425(2) and 442 (old Code) and by the High Court Rules.

Postponement of execution of death sentence under section 415.—This is also a new section providing for the postponement of execution of a death sentence in cases where an appeal against the judgment of a High Court passing or confirming such sentence can be preferred to the Supreme Court under the Constitution. Appeals in capital sentence cases may come up before the Supreme Court : (i) as of right under article 134(1)(a) or (b) ; or (ii) on a certificate of fitness granted by the High Court under article 132 or 134(1)(c) ; or (iii) after obtaining special leave from the Supreme Court under article 136 of the Constitution. Sub-sections (1), (2) and (3) of this section provide for the postponement of execution in all the eventualities of appeal. The new provision is “to ensure that where there is a possibility of appealing to the Supreme Court, the appeal is not rendered infructuous by an unfortunately prompt execution of the sentence”.

Section 416.—This section corresponds to section 382 of the old Code. There is no change in the old provision contained in that section .

B. Imprisonment

Power to appoint place of imprisonment.

417. (1) Except when otherwise provided by any law for the time being in force, the State Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub-section (2), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been released from the civil jail under section 58 of the Code of Civil Procedure, 1908 (5 of 1908), or section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be ; or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be released under section 58 of the Code of Civil Procedure, 1908 (5 of 1908), or under section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be.

Execution of sentence of imprisonment.

418. (1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant :

Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct.

(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined ; and in such case, the sentence shall commence on the date of his arrest.

Direction of warrant for execution.

419. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Warrant with whom to be lodged.

420. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

NOTES

Section 417.—This section corresponds to section 541 of the old Code.

No need of warrant for detention till rising of court—Section 418.—Section 418 corresponds to section 383 of the old Code. The proviso to sub-section (1) and

sub-section (2) are new. The proviso legalises a procedure which is being followed (although perhaps in breach of statutory provision) to the effect that where the accused is sentenced to imprisonment till the rising of the Court, he is simply detained in custody in the Court premises for the few hours, no warrant being prepared or sent as required under that section.

Sub-section (2) is consequential to the change made in section 353 for cases where a sentence of imprisonment is passed in the absence of the accused.

Sections 419 and 420.—These sections correspond to sections 384 and 385 of the old Code respectively, without any change in the old provisions.

C. Levy of fine

Warrant for levy of fine.

421. (1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

- (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender ;
- (b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter :

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Effect of such warrant.

422. A warrant issued under clause (a) of sub-section (1) of section 421 by any Court may be executed within the local jurisdiction of such Court, and it shall authorise the attachment and sale of any such property outside such jurisdiction, when it is endorsed by the District Magistrate within whose local jurisdiction such property is found.

Warrant for levy of fine issued by a Court in any territory to which this Code does not extend.

423. Notwithstanding anything contained in this Code or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in any territory to which this Code does not extend and the Court passing the sentence issues a warrant to the Collector of a district in the territories to which this Code extends, authorising him to realise the amount as if it were an arrear of land revenue, such warrant shall be deemed to be a warrant issued under clause (b) of sub-section (1) of section 421 by a Court in the territories to which this Code extends, and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.

Suspension of execution of sentence of imprisonment.

424. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days ;

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made ; and if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith ; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

NOTES

Section 421—Fine to be recovered as an arrear of land revenue.—Section 421 corresponds to section 386 of the old Code. Old sections 386(1)(b) and 386(3) provided for a *cumbrous* and time-consuming method of realising fine. It has been substituted by recovery of the fine as an arrear of land revenue.

In the proviso to sub-section (1), it has been made clear, unlike the proviso to old section 386(1), that the recovery of the fine should be pursued in a case where an order of payment of expenses or compensation has been

passed, although the offender has undergone imprisonment in default thereof. This is in order that "a contumacious offender should not be permitted to deprive the aggrieved party of the small compensation awarded to it by the device of undergoing the sentence of imprisonment in default of payment of fine."

Sections 422-424.—These sections correspond to sections 387, 387A and 388 of the old Code respectively without any material change in the old sections.

D. General provisions regarding execution

Who may issue warrant.

425. Every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

Sentence on escaped convict when to take effect.

426. (1) When a sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict, such sentence shall, subject to the provisions hereinbefore contained, take effect immediately.

(2) When a sentence of imprisonment for a term is passed under this Code on an escaped convict,—

(a) if such sentence is severer in kind than the sentence [which such convict was undergoing when he escaped, the new sentence shall take effect immediately ;

(b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

(3) For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment.

Sentence on offender already sentenced for another offence.

427. (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence :

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprison-

ment for life, the subsequent sentence shall run concurrently with such previous sentence.

NOTES

Reference to solitary confinement omitted.—Sections 425, 426 and 427 correspond to sections 389, 396 and 397 of the old Code, respectively. There is no change in the old provisions except that reference to solitary confinement in old section 396(2) has been omitted 'as such confinement has ceased to be in vogue'.

Exercise of power under section 427(1) : Power under section 427(1) should be exercised at the time of awarding subsequent sentence and not afterwards—*Gopal Dass v. State* AIR 1978 Delhi 138.

Implication of section 427(2).—Provisions of section 427(2) are made for dealing with the offender convicted subsequently and at that time undergoing the sentence upon conviction. This implies that a person, who has been subjected to a sentence of imprisonment for life is not possibly available to serve any other subsequent sentence of imprisonment for a given term while undergoing life imprisonment. In other words, while former sentence is being served, if there is subsequent conviction subjecting such an offender to imprisonment for a stated term, the latter by clear implication could only be served with that sentence. Statutorily the subsequent sentence is therefore directed to run concurrently with the previous sentence for life. This statutory provision of sub-section (2) will be applicable to period spent in jail by a person subjected to conviction and undergoing sentence of imprisonment for life though eventually his conviction may be set aside. To the plain intendment of sub-section (2) cannot be added the words 'while conviction subsists'. The principle underlying sub-section (2) has a clear statutory policy so that a person condemned to undergo life imprisonment is not required nor conceivably contemplated to undergo subsequently any other sentence of imprisonment for lesser term while in jail.

Petitioner convicted of murder and sentenced to life imprisonment on 30-12-1972 but on appeal acquitted on 12-7-1974. In the meantime at a subsequent trial against him for offences under sections 409, 467 and 477A read with section 34 IPC, he was convicted and sentenced to rigorous imprisonment for 1 year, 2 years and 1 year respectively on 29-3-1973; the sentences to run concurrently. The conviction under sections 409 and 477A read with section 34 was maintained in appeal decided on 6-9-1976. Thus the petitioner had served his sentence—*Vasantrao v. State* 1976 Mah. LJ Note 86.

Period of detention undergone by the accused to be set off against the sentence of imprisonment.

428. Where an accused person has, on conviction, been sentenced to imprisonment for a term [, *not being imprisonment in default of payment of fine.*] the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

NOTES

Object of the section.—This is a new provision inserted by the Joint Committee of Parliament. The Committee while recommending the new provision observed :

“The Committee has noted the distressing fact that in many cases accused persons are kept in prison for very long period as under-trial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as under-trial prisoner. Indeed, there may even be cases where such a person is acquitted. No doubt, sometimes courts do take into account the period of detention undergone as under-trial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone. But this is not always the case so that in many cases, the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute. The Committee has also noted that a large number of persons in the overcrowded jails of today are under-trial prisoners. The new clause seeks to remedy this unsatisfactory state of affairs. The new clause provides for the setting off of the period of detention as an under-trial prisoner against the sentence of imprisonment imposed on him. The Committee trusts that the provision contained in the new clause would go a long way to mitigate the evil.”

Amendment.—The Amendment Act, 1978 has amended the section to clarify that it will *not* apply to the imprisonment in default of payment of fine. The amendment removes the doubt on the question whether the period of imprisonment referred to in the section will apply to imprisonment in default of payment of fine. See Supreme Court's decision in *B.P. Andre v. Supdt.*, AIR 1975 SC 164.

Scope of the section.—Is this section confined in its application only to cases where a person is convicted after the coming into force of the New Code of Criminal Procedure, or does it also embrace cases where a person has been convicted before but his sentence is still running at the date when the New Code came into force? The Supreme Court has in *B.P. Andre v. Superintendent, Central Jail (supra)* held :

“This section, on a plain natural construction of its language, posits for its applicability a fact situation which is described by the clause “Where an accused person has, on conviction, been sentenced to imprisonment for a term”. There is nothing in this clause which suggests, either expressly or by necessary implication, that the conviction and sentence must be after the coming into force of the new Code of Criminal Procedure. The language of the clause is neutral. It does not refer to any particular point of time when the accused person should have been convicted and sentenced! It merely indicates a fact situation which must exist in order to attract the applicability of the section and this fact situation would be satisfied equally where an accused person has been convicted and sentenced before or after the coming into force of the new Code of Criminal Procedure. Even where an accused person has been convicted prior to the coming into force of the new Code of Criminal Procedure but his sentence is still running, it would not be inappropriate to say that the “accused person, has on conviction, been sentenced to imprisonment for a term”. Therefore, where an accused person has been convicted and he is still serving his sentence at the date when the new Code of Criminal Procedure came into force, section 428 would apply and he would be entitled to claim that the period of detention undergone by him during the investigation, inquiry or trial of the case should be set off against the term of imprisonment imposed on him and he should be required to undergo only the remainder of the term. Of course, if the term of the sentence has already run out, no question of set off can arise. It is only where the sentence is still running that the section can operate to restrict the term.

This construction of the section does not offend against the principle which requires that unless the legislative intent is clear and compulsive, no retrospective operation should be given to a statute. On this interpretation, the section is not given any retrospective effect. It does not seek to set at naught the conviction already recorded against the accused person. The conviction remains intact and unaffected and so does the sentence already undergone. It is only the sentence, in so far as it yet remains to be undergone, that is reduced. The section operates prospectively on the sentence which yet remains to be served and curtails it by setting off the period of detention undergone by the accused person during the investigation, inquiry or trial of the case. Any argument based on the objection against giving retrospective operation is, therefore, irrelevant.

We reach the same conclusion also by different process of reasoning. Sub-section (1) of section 484 repeals the old Code of Criminal Procedure. But sub-section (2)(b) provides that notwithstanding such repeal, all sentences passed under the old Code of Criminal Procedure and which are in force immediately before the commencement of the new Code of Criminal Procedure shall be deemed to have been passed under the corresponding provisions of the new Code of Criminal Procedure. It is now well settled law that where a legal fiction is created, full effect must be given to it and it should be carried to its logical conclusion. We must, therefore, imagine the sentence imposed upon the petitioner as one imposed under the new Code of Criminal Procedure and then give effect to all the consequences and incidents which would inevitably flow from or accompany a sentence imposed under the new Code of Criminal Procedure.

Section 428 is absolute in its terms. It provides for set off of the pre-conviction detention of an accused person against the term of imprisonment imposed on him on conviction, whatever be the term of imprisonment imposed and whatever be the factors taken into account by the Court while imposing the term of imprisonment. It does not say that where the pre-conviction detention of an accused person has already been taken into account by the Court while imposing the term of imprisonment on conviction, no set off of such pre-conviction detention shall be permitted, and if the legislature has not introduced any such exception, we cannot read it into the section by a process of judicial construction. To read such an exception into the section would be to do violence to the language of the section and to read words which are not there. That is clearly impermissible according to well recognised canons of construction. It is quite understandable that the legislature has not introduced any such exception, because very often the factors which weigh with the Court in imposing a particular term of imprisonment are not articulated and in many cases it would be a matter of speculation whether and to what extent the fact that an accused person was in detention prior to his conviction must have weighed with the Court in imposing a sentence of imprisonment."

Applicability of the section and procedure to invoke it.—It is clear from section 428 itself that even though the conviction was prior to the enforcement of the New Code, the benefit of that section would be available to such a conviction. The section does not contemplate any challenge to conviction or sentence. It confers a benefit on a convict reducing his liability to undergone imprisonment out of the sentence imposed for the period which he had already served as an

under trial prisoner. The procedure to invoke section 428 could be a miscellaneous application by the accused to the Court at any time while the sentence runs for passing an appropriate order for reducing the term of imprisonment which is the mandate of the section—*Suraj Bhan v. Om Prakash* AIR 1976 SC 648.

Applicability of the section to imprisonment in default of fine.—In *B.P. Andre's* case, *ibid*, the Supreme Court held :

“When an accused person is sentenced to imprisonment for a term in default of payment of fine, it is as much a sentence of imprisonment imposed upon him as a substantive sentence of imprisonment. It is true that where an accused person is sentenced to imprisonment for a term in default of payment of fine, he can avoid “undergoing such imprisonment by making payment of the fine, but if he does not, he would have to undergo such imprisonment and that would be for the full term specified in the sentence. No distinction can be made in principle between a substantive sentence of imprisonment and a sentence of imprisonment in default of payment of fine and both must be held to be within the scope and intendment of section 428.”

We fail to see how, having regard to this object of section 428, any differentiation can be made between a substantive sentence of imprisonment and a sentence of imprisonment in default of payment of fine. The nature of the mischief arising by reason of the accused person being made to suffer jail life “for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute” would be the same in both cases and it is impossible to imagine that the legislature should have sought to remedy this mischief in one case and leave it untouched in the other. Therefore, even if two constructions of section 428 were possible, we should adopt that which suppresses the mischief and advances the remedy and carries out the object of the legislature as fully and effectually as possible. We accordingly take the view that section 428 applies not only in relation to substantive sentence of imprisonment but also in relation to a sentence of imprisonment in default of payment of fine. The period for which an accused person has been detained during investigation, inquiry or trial of the case is liable to be set off not only against the term of substantive imprisonment but also against the term of imprisonment in default of payment of fine. The set off, however, does not absolve the accused person from the liability to pay the fine imposed on him.” As stated already, the proposition laid down in this case as regards applicability of the section to imprisonment in default of fine no more holds good in view of the amendment in section 428.

Whether provision applies to sentence under court-martial.—The accused cannot insist that the jail authorities must compute the period of imprisonment imposed by the court martial under section 428. Obviously the Code does not apply to him by reason of section 5 of the Code—*F.R. Jesurathnam v. Chief of Air Staff* 1976 Cr. LJ 65. However, in *Shiv Raj v. Supdt. Central Jail* (1977) CR. LJ 79, following the pronouncements of the Supreme Court in *B.P. Andre's* case and *Suraj Bhan's* case *ibid*, it has been held that section 428 embraces a case where a person has been convicted before Act 5 of 1976 came into force and is undergoing the sentence of imprisonment at the time of the said Act came into force.

Provision does not apply to persons detained under a preventive detention law.—Allowing two appeals by the State of Andhra Pradesh against the judgment

of the State High Court, the Supreme Court in a judgment delivered on 17-2-1978 has ruled that a person detained under a preventive detention law is not entitled to the benefit of remission in sentence, either under section 428 or under the Prisoners Act, 1894, for a period during which he was in jail as an undertrial prisoner before his conviction in a Sessions case. Under the Code as well as the Prisoners Act, the period of undertrial detention cannot be treated on the same footing as a term of imprisonment on conviction of an accused person or a person detained under any preventive detention law. Such imprisonment therefore cannot be 'set-off' against a term of imprisonment imposed by a court on him on his conviction in criminal or Sessions case. In short section 428 does not equate an undertrial detention or remand detention with imprisonment on conviction.

Provision does not apply to life term.—An accused who is convicted and sentenced to imprisonment for life, cannot claim the benefit of the section in view of the distinction between 'imprisonment for life' and 'imprisonment for a term' clearly made in the Indian Penal Code. However the accused would be entitled to set off the period of detention undergone by him during investigation, inquiry or trial before the date of conviction against the term of imprisonment to which it may be reduced if he is given any remission by the government and or if the sentence of imprisonment for life is commuted—*Abdul Azad v. State* 1976 Cr. LJ 315 ; see also *Raja Husein v. State of Maharashtra* 1976 Cr. LJ 1294 ; *K. Karunananan v. State of Kerala* ILR (1975) 1 Ker. 215.

Applicability of the provision—illustrations.—The following cases are illustrative of the applicability of the provision of set-off :—

1. In applying the set off it is immaterial that the trial or the appellate court had awarded lesser sentence in consideration of the period of imprisonment undergone by the accused as an under-trial—*B.P. Andre v. Supdt. Central Jail, ibid.*
2. An accused who is detained in jail in pursuance of non-bailable warrant during the pendency of appeal is entitled to set-off against the sentence passed in appeal—*State of UP v. Ram Kishan* 1976 SCC (Cr.) 443.
3. The detention of the petitioner in the British Jail in connection with or for the purpose of the case, in which he was convicted, while the case was pending against him can be called detention within the meaning of section 428 and he is entitled to set off—*Jayanthi Dharma Teja v. State of AP* (1975) Mad. LJ (Cr.) 531.
4. The period of jail custody and the period of imprisonment undergone after sentence must be set off against the period of sentences and if the former two periods together exceed the period of sentence, the accused cannot be called upon to undergo any further imprisonment—*Jogeshwar Tewary v. State of Bihar* 1976 Cr. LJ 448.
5. The contention of the accused that he was in jail for a month and six days after conviction before he was released on bail and that the said period should be given a set off is not tenable under section 428 since that section applies only to a stage before conviction—*Param Dev v. State* 1975 Cr. LJ 1346.

SOME MISCELLANEOUS POINTS ABOUT THE PROVISION

1. *Period of pre-conviction to be stated.*—The courts convicting the accused should specify in their orders the total period of pre-conviction detention that

the accused might have undergone so as to enable authorities concerned to give effect to section 428—*Namesan v. State of Maharashtra* 76 BLR 670.

2. *Section 428 contemplates an application not appeal.*—The accused had urged in the application under section 428 that the period of imprisonment undergone by him as an under-trial prisoner should be set off against the period of imprisonment imposed upon him. He had not challenged the conviction. The order of the High Court under section 428 reducing the term of imprisonment to that already undergone by him was clearly unsustainable in terms of section 428—*Suraj Bhan v. Om Prakash, ibid.*
3. *No relief if rights did not arise at the material time.*—Normally, the court ceases to be in seisin of the matter when it is disposed of. A problem, therefore, arises in granting relief to the petitioner in terms of section 428 if the rights claimed by the petitioner did not arise at the time when the court disposed of the criminal appeal by upholding the conviction ordered by the Sessions Court. In such a case relief can possibly be claimed only under section 386 or section 482. Since the right to relief did not accrue when the appeal was disposed of, it can hardly be said that the relief is consequential or incidental to the Appellate Court's Order—*Suprova Bose v. State* 1976 Cr. LJ 313.

Saving.

429. (1) Nothing in section 426 or section 427 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences of imprisonment, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Return of warrant on execution of sentence.

430. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it is issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Money ordered to be paid recoverable as a fine.

431. Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine :

Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 421, after the words and figures "under section 357", the words and figures "or an order for payment of costs under section 359" had been inserted.

NOTES

Sections 429, 430 and 431 correspond to sections 398, 400 and 547 of the old Code respectively, without any material change in the old sections.

*E. Suspension, remission and commutation of sentences***Power to suspend or remit sentences.**

432. (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with :

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and—

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail ; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression “appropriate Government” means,—

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government ;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

NOTES

Government competent to commute.—This section incorporates the provisions of sections 401 and 402(3) of the old Code. There is no change in substance in the old law except that in sub-section (7)(b), it has been made clear, following the provision contained in section 55A(b) of the IPC, that the particular State Government which is competent to order commutation is the Government of the State “within which the offender is sentenced”.

Power to commute sentence.

433. The appropriate Government may, without the consent of the person sentenced, commute—

- (a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860) ;
- (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine ;
- (c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine ;
- (d) a sentence of simple imprisonment, for fine.

NOTES

This section incorporates the provisions of section 402(1) of the old Code and the substance of sections 54, 55 and 55A of the IPC, so that the duplication is removed and the law is stated in one place.

[Restriction on powers of remission or commutation in certain cases.]

433A. *Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.]*

NOTES

Insertion by Amendment Act, 1978.—New section 433A inserted by the Amendment Act, 1978 is explained in Notes on Clauses appended to the Code of Criminal Procedure (Amendment) Bill, 1978 as under :

“Section 432 contains provision relating to powers of the appropriate Government to suspend or remit sentences. The Joint Committee on the Indian Penal Code (Amendment) Bill, 1972, had suggested the insertion of a proviso to section 57 of the Indian Penal Code to the effect that a person who has been sentenced to death and whose death sentence has been commuted into that of life imprisonment and persons who have been sentenced to life imprisonment for a capital offence should undergo actual imprisonment of 14 years in jail. Since this particular matter relates more appropriately to the Criminal Procedure Code, a new section is being inserted to cover the proviso suggested by the Joint Committee.”

Concurrent power of Central Government in case of death sentences.

434. The powers conferred by sections 432 and 433 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government.

NOTES

This section corresponds to section 402A of the old Code without any change in the old section.

State Government to act after consultation with Central Government in certain cases.

435. (1) The powers conferred by sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence—

- (a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or
- (b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or
- (c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

NOTES

Remission, etc., only in consultation with Central Government.—This is a new provision. The Law Commission had recommended that in respect of cases investigated by the CBI or involving misappropriation or destruction of, or damage to, Central Government property and offences committed by the Central Government servants in the discharge of their official duties, remission or commutation of sentence should be granted by the State Government only after 'consultation' with the Central Government. The scope of this recommendation was widened by the Joint Committee of Parliament so as to include investigations made by other central agencies authorised by law in this behalf.

Remission for offences in State and Union fields.—Where persons are prosecuted for offences, some under laws in the State field and some in the Union field and

sentenced to separate terms of imprisonment to run concurrently, State Governments sometimes remit the whole sentence without a reference to the Central Government, although legally the Central Government has to order remission in relation to offences in the Union field. A provision has been added requiring specifically that the person cannot be released unless the Central Government also remits the part of the sentence relating to an offence in the Union field.

CHAPTER XXXIII PROVISIONS AS TO BAIL AND BONDS

In what cases bail to be taken.

436. (1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail :

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided :

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 [or *section 446A*].

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

NOTES

Right to bail.—This section corresponds to section 496 of the old Code. Under sub-section (1), the right to bail is absolute in case of bailable offences. Sub-section (2), however, provides that where a person released on bail has absconded or has failed to appear before the court on the date fixed, he shall not be entitled to bail when brought to a Court on any subsequent date even though the offence may be bailable. The sub-section also provides that refusal of bail under such circumstances shall be without prejudice to any action that may be taken under section 446 (new) for forfeiture of the bail bond.

Refusal of bail whether a "final order".—In *K.P. Vasu v. State* AIR 1975 Ker. 15, it has been held that the expression "final order" has been used in article 134(1) of the Constitution in contradistinction to "interlocutory" order. The paramount requirement of a "final order" is that it should terminate the proceedings, one way or the other. An order refusing a bail is not a final order contemplated by article 134(1). Bail may be refused at one stage but may be granted at a later stage in the same proceedings. It can be even rescinded or modified or cancelled at any stage. It does not terminate the proceeding nor decides a point for decision in the case and therefore is not a final order.

[When bail may be taken in case of non-bailable offence.]

437. (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—

- (i) *such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life ;*
- (ii) *such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence :*

Provided *that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm :*

Provided further *that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason :*

Provided also *that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.]*

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, [*the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail*], or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI, or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court may impose any condition which the Court considers necessary—

- (a) *in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or*
- (b) *in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or*
- (c) *otherwise in the interests of justice.*

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons [*or special reasons*] for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

NOTES

This section corresponds to section 497 of the old Code. The following changes have been effected in the provision as contained in the old section :

No refusal of bail for identification.—The second proviso has been added by the Joint Committee, which observed, “It was brought to the notice of the Committee that sometimes bail is being refused by courts on the sole ground that the accused may be required by the investigating officer for an identification parade which may or may not be imminent. In the Committee’s opinion this should not be permitted if otherwise the accused person is entitled to be released on bail.”

Basic rule as to grant of bail.—The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with the court when considering the question of jail. So also the heinousness of the crime—*State of Rajasthan v. Balchand* AIR 1977 SC 2447.

Criteria for grant or refusal of bail.—In the words of the Supreme Court : “Bail or jail at the pre-trial or post-conviction stage belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion. The Code is cryptic on this topic and the court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden of the public treasury”—*G. Narasimhulu v. Public Prosecutor* AIR 1978 SC 429. In this case the Court laid down the following criteria for grant or refusal of bail in the case of a person who has either been convicted and has appealed or one whose conviction has been set aside but leave has been granted by the Supreme Court to appeal against the acquittal :

1. *Nature of crime.*—When the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment of it assigned by law is of extreme severity, the court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged.

2. *Nature of charge, evidence and possible punishment.*—The nature of the charge is the vital factor and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

3. *Possibility of interference with course of justice.*—Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The legal principle and practice validate the court considering the likelihood of the

applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice.

4. *Antecedent of the applicant.*—It is not only traditional but rational, in the context of the third criterion mentioned above, to enquire into the antecedents of the applicant for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. Bail discretion, on the basis of evidence about the criminal record of a defendant is not an exercise in irrelevance.

5. *Furtherance of interests of justice.*—Under article 21 of the Constitution, deprivation of liberty is permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good, and the State necessity spelt out in article 19. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice to the individual involved and society affected.

6. *Matters to be considered in the bail plea before the Supreme Court.*—When a person, charged with a grave offence, has been acquitted at a stage, the intermediate acquittal has pertinence to a bail plea when the appeal before the Supreme Court pends. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again the ground for denial of bail becomes weaker considering that one court below has acquitted the applicant, though that acquittal may not be conclusive.

7. *Socio-geographical circumstances.*—The likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. These socio-geographical circumstances have also a bearing on the issue.

8. *Prospective misconduct.*—Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal.

9. *Prison period already spent.*—A circumstance of some consequence, when considering a motion for bail, is the period in prison already spent and the prospect of the appeal being delayed for hearing.

10. *Conditions on bail.*—The delicate light of the law favours release unless countered by the negative criteria necessitating that course. The corrective instinct of the law plays upon release orders by strapping on to them protective and curative conditions. Heavy bail from poor man is obviously wrong.

In this case the Supreme Court enlarged the petitioners on bail on their own bond by taking into account the following factors, namely, (i) acquittal of the petitioners by the trial court ; (ii) they had not abused the bail granted to them when their appeal was pending in the High Court ; (iii) the petitioners had already suffered imprisonment for a year and the appeal in the Supreme Court would take a few years more ; and (iv) the Magistrate's report on petitioners' conduct was not uncomplimentary. In view of the factions in their village and likelihood that the community peace might be disturbed, proper safeguards and conditions were imposed while granting bail.

Amendment Act, 1980.—Sub-section (1) has been substituted by the Amendment Act, 1980 with effect from 23-9-1980. The amendment makes it difficult for habitual criminals falling within defined categories to obtain bail. It provides that if any person, who has already been convicted of any cognizable offence and non-bailable offence *twice*, or who has been convicted *once* of an offence punishable with death or imprisonment for life or imprisonment for seven years or more is arrested and accused of or suspected of the commission of any cognizable and non-bailable offence, he will not ordinarily be granted bail by the Court. As stated in Lok Sabha by the Minister of State of Home Affairs, such a provision has become necessary to curb the criminal activities of habitual offenders guilty of serious crimes. However, discretion of the Courts has not been taken away altogether. A Court will still be able to grant bail in such cases but only for special reasons to be recorded by it.

Amendments made in sub-sections (2) and (4) are consequential.

Direction for grant of bail to person apprehending arrest.

438. (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section ; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

- (i) a condition that the person shall make himself available for the interrogation by a police officer as and when required ;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer ;
- (iii) a condition that the person shall not leave India without the previous permission of the Court ;
- (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail ; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

NOTES

Need of the provision of anticipatory bail.—This new provision has been enacted to enable the superior courts to direct the release of a person on bail prior to his arrest (commonly known as “anticipatory bail”). The Law Commission in recommending the provision in the new Code observed :—

“Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail

arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail."

Scope of power.—In *Balchand Jain v. State of MP* AIR 1977 SC 366, the Court has laid down the following propositions in regard to grant of anticipatory bail :—

1. The power under section 438, is of an extraordinary character and must be exercised sparingly and in exceptional cases only.
2. The said power is not unguided or uncanalised but all the limitations imposed in the preceding section 437, are implicit therein and must be read into section 438 as well.
3. In addition to the limitations imposed in section 437, the petitioner must further make out a special case for the exercise of the power to grant anticipatory bail.

In addition to these three propositions, the Supreme Court in *Gurbaksh Singh v. State* AIR 1978 P&H 1, has also laid down the following further propositions :

1. Neither section 438, nor any other provisions of the Code authorise the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled.
2. In addition to the limitations imposed in section 437, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail.
3. Where a legitimate case for the remand of the offender to the police custody under section 167(2) can be made out by the investigating agency or a reasonable claim to secure incriminating material for information likely to be received from the offender under section 27 of the Evidence Act can be made out, the power under section 438 be not exercised.
4. The discretion under section 438, be not exercised with regard to offences punishable with death or imprisonment for life unless the court at that very stage is satisfied that such a charge appears to be false or groundless.
5. The larger interest of the public and the State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under section 438 be not exercised.
6. Mere general allegations of *mala fides* in the petition are inadequate, and the Court must be satisfied on materials before it that the allegations of *mala fides* are substantial and the accusations appear to be false and groundless.
7. The burden of establishing *mala fides* is on the person alleging. Apart from coming within the four corners of section 437, the petitioner must establish that the charge levelled against him is *mala fide* and stems from ulterior motive.

Guidelines for granting anticipatory bail.—Section 438 immediately follows section 437 which is the main provision for bail in respect of non-bailable offences. It is therefore manifest that the conditions imposed by section 437(1) are implicitly contained in section 438—*Balchand Jain v. State of MP* AIR 1977

SC 366. Anticipatory bail will be granted on the same considerations on which bail is granted under section 437 to a person accused of a non-bailable offence. In addition, the court must be satisfied that if anticipatory bail is refused an irreparable wrong or injustice might result which it is desirable to avoid—*Bhagirath v. State* 1975 Cr. LJ 1681.

The words 'he shall not be so released' occurring in section 437(1) will be read as 'he may not be so released'. Although there is no bar to the exercise of discretion by the High Court, it would be just and proper to exercise the discretion on the guidelines provided in section 437(1)—*Ramsewak v. State* 1974 Cr. LJ 1090. Exercise of power under the section should be restricted to exceptional cases. The court may impose such conditions as it thinks fit with a view to avoid the possibility of the person hampering investigation—*Bhagirath v. State, ibid.*

Effect of anticipatory bail on power of police to investigate.—The Code confers a statutory right on the police to investigate into cognizable crimes and authorises the arrest and detention in custody of the offender for a certain period. Mere joining of a person, however, in the course of the investigation whilst on anticipatory bail is no substitute for investigation in custody in all those cases where his personal interrogation may be legitimately required. Therefore, as soon as an effective order of anticipatory bail has been made under section 438, the provisions of section 167(2) cannot come into play thereafter. The end result of the grant of anticipatory bail in such a case would be that the investigating agency must thereafter be denuded of its right to interrogate the offender in custody and the magistracy denied its discretion to grant a police remand, howsoever, incriminating the material on which this may be sought might be. In legal terminology, the exercise of power under section 438 would, therefore, override the provisions of section 167(2) of the Code even in those cases where an urgent and well-founded claim for interrogation in custody may be completely spelled out. There is, however, nothing in section 438 to indicate that the provision was intended to override the legitimate procedure of investigation into serious crime which has been prescribed in Chapter XII of the Code. In the event of a conflict, the discretionary grant of anticipatory bail must give way to the statutory rights and duties under section 167(2)—*Gurbaksh Singh v. State* AIR 1978 P&H (FB) 1.

Ordinarily, the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. The power to interfere with the discretion of the police at the earliest stages of an investigation should be exercised with utmost care and for this the court should apply its mind to the allegations made in the petition and the materials available with the police—*Bhagirath v. State, ibid.*

Whether blanket anticipatory bail possible.—In *Onkar Nath Aggarwal v. State* 1976 Cr. LJ 1142, it has been observed that there are only two conditions which must exist before a person can move an application for anticipatory bail. In the first place there must exist a ground to believe that he may be arrested and secondly there must be an accusation of his having committed a non-bailable offence.

In *Gurbaksh Singh v. State* AIR 1978 P&H 1, it has been held that the exercise of power under section 438 is with regard to a specific accusation and cannot be extended in a blanket fashion to cover all offences with which the petitioner may come to be charged. No question of the grant of anticipatory bail can arise with regard to an accusation not yet levelled or in respect of an offence not yet committed. Any exercise of such a power would conflict with and render

material provisions of the Code virtually nugatory, e.g., section 151, sections 41 to 44, etc. Further, there is no provision in the Code which either in terms or by necessary implication would warrant the grant of a blanket anticipatory bail by a court. Such a power cannot also be derived from the inherent powers vested in a High Court since the Code is exhaustive as regards the matters for which it specifically provided and any theory of inherent power for the grant of blanket anticipatory bail has to be negated.

Forum of application.—The section contemplates two forums for moving an application, namely, the High Court and Court of Session. Both the jurisdictions are concurrent and it is open to the petitioner to choose either of these two. An application under section 438 is maintainable in the High Court without the same having been moved and rejected first in the Court of Session—*Onkar Nath Aggarwal v. State* 1976 Cr. LJ 1142. If a person so chooses he can file a direct application to the High Court for anticipatory bail—*Joginder Singh v. State of HP* ILR 1975 181. In *Hajiali Sher v. State of Rajasthan* 1976 Cr. LJ 1658, however, it has been observed that the ordinary practice should be that the lower court (Sessions Court) should be first moved in the matter though in exceptional or special cases or circumstances, the High Court may entertain and decide the application for anticipatory bail.

In *Prahlad Singh v. U.T. Chandigarh* 1975 Pun. LJ (Cr.) 186, it has been held that after the rejection of a petition of anticipatory bail by the Sessions Court, a second application is not barred. The word 'or' provides a choice to the person to go either to Sessions Court or High Court.

The power is concurrent in both the forums. Reference to sections 8 and 9 shows that Additional Sessions Judges, who have coordinate jurisdiction, would be equally vested with this power. Reference to sections 9(5) and 10(3) would further indicate that occasions may not be lacking when such a power would have to be exercised by Assistant Sessions Judges and the Chief Judicial Magistrates as well—*Gurbaksh Singh v. State* AIR 1978 P&H 1.

Notice to the other side.—The intention of Parliament in enacting the salutary provision of anticipatory bail in non-bailable offences was to see that the liberty of the subject was not put in jeopardy on frivolous grounds at the instance of unscrupulous or irresponsible persons or officers who might sometimes be in charge of prosecution. The rule of prudence, therefore, required that notice should be given to the other side before passing a final order for anticipatory bail so that wrong order for anticipatory bail is not obtained by a party by placing incorrect or misleading facts or suppressing material facts. In emergent cases, however, the court might make an interim order of anticipatory bail before issuing notice to the other side—*Balchand Jain v. State of MP* AIR 1977 SO 366.

When application may be rejected.—One possible ground for rejecting an application for grant of anticipatory bail is that a warrant of arrest has already been issued duly by a competent court. This will rule out the first part of section 438, namely, "reason to believe that he may be arrested on any accusation of having committed a non-bailable offence". In such a case the said provisions would not clearly apply because the stage reached is one beyond the stage of a mere apprehension or 'reason to believe'. It is a stage of certainty because of issue of warrant—*In re. Puran Chandra* 1975 Cr. LJ 1815.

Section 438 is not designed to assist those who want to avoid the due process of law and to evade arrest pursuant to warrant issued by a court. The court's

process must first be respected before any one seeks court's aid. On issue of arrest warrant, the concerned person must surrender or appear before the Court and seek bail under section 437. Section 438 applies only to arrests while the Court's process has not been issued. Section 438 does not cover the case of an accused against whom a non-bailable warrant has been issued by a court which took cognizance of an offence against him. Granting or refusing bail to such accused is essentially and primarily within the jurisdiction of the Magistrate issuing warrant. The superior courts are not expected to preempt the exercise of such jurisdiction—*N. Dasaratha Reddy v. State* [1975] 2 APLJ 2214.

Grant of refusal or anticipatory bail an interlocutory order.—The grant or refusal of a bail application under section 438 is essentially an interlocutory order. The accused is usually enlarged on bail in non-bailable cases to enable him to defend himself adequately and thereby assist the cause of justice. It does not determine the guilt or innocence of the accused and thus fulfils all the usual characteristics of an interlocutory order. The bar of section 397(2) and prohibition of section 401 will apply to the refusal or grant of bail under section 438—*Joginder Singh v. State of HP* ILR 1975 HP 181 and *Dhola v. State* 1975 Cr. LJ 1274.

Effect of order.—The order is to be passed before the arrest of the applicant. The section does not enable the court to pass an order directing the release of the applicant on bail to be operative some days after the arrest is effected. The effect of such an order would be to disable the applicant from making a regular application for bail under section 437 immediately upon his arrest, before the period mentioned in the order is over. Section 438 does not entitle the Court to override the provisions of section 437 and to stay for a certain period of time the right of the applicant to apply for and to obtain his release on bail—*G.U. Prabhu v. State* 1975 Cr. LJ 1339.

Applicability of the provisions of DIR cases.—If a person is not in custody but is merely under an apprehension of arrest and he applies for grant of 'anticipatory bail' under section 438, his case would clearly be outside the mischief of rule 184 of the DIR, because when the court makes an order for grant of anticipatory bail, it would not be directing release of a person who is in custody. It is an application for release of a person in custody that is contemplated by rule 184 and not an application for grant of anticipatory bail by a person apprehending arrest. Section 438 and rule 184 thus operate at different stages, one prior to arrest and the other after arrest and there is no overlapping between these two provisions so as to give rise to a conflict between them. It must, therefore, follow as necessary corollary that rule 184 does not stand in the way of granting anticipatory bail. In regard to scope also both the provisions are not equal—*Balchand Jain v. State of MP*, *ibid.* ; See also *State of MP v. Shantilal* 1976 Cr. LJ 256.

Grant of anticipatory bail—Some instances.—The following instances will indicate the circumstances in which applications for anticipatory bail have been accepted:

1. No clear allegations were made in the FIR and no evidence was collected. Held, no justification for arrest of the accused. The accused was released on anticipatory bail with choice left open to the State to ask for the cancellation of bail as and when evidence is collected—*R.P. Puri v. State of Punjab* 1974 CLR 502.
2. No case registered against the accused and the case in which he was arrested, he was allowed bail by the trial court. But the accused apprehended that

he could be arrested for some non-bailable offence. *Held*, a direction could be issued under section 438—*Hari Ram v. State of Haryana* 1975 CLR 538.

3. Dispute between petitioner and society regarding amount pending before Arbitrator. *Held*, the dispute being of a civil nature, application under section 438 could be allowed—*Naranjan Singh v. State of Haryana* 1975 CLR 22 ; *See also Randhir Singh v. State of Haryana* 1975 CLR 612.
4. The mere mention of the name of the accused in FIR only or in the warrant that has already been issued would not change the complexion of the case. Application under section 438 should not be rejected merely on the ground that the applicant concerned has been mentioned in the complaint—*P.C. Chatterjee v. State of West Bengal* [1975] 79 Cal. W. No. 890.

Special powers of High Court or Court of Session regarding bail.

439. (1) A High Court or Court of Session may direct—

- (a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section ;
- (b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified :

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

NOTES

Special powers of superior courts regarding bail.—This section deals with special powers of superior courts regarding bail. It incorporates the provisions contained in section 498(1) [second part] and section 498(2) of the old Code. Under the old law, the power of the superior courts in the matter of grant of bail fell under two heads : (a) Power to direct release on bail ; and (b) Power to direct arrest of a person released on bail. The power under head (a) above was expressed in old section 498(1) in the words “the High Court or Court of Session may, *in any case whether there be an appeal on conviction or not, direct that any person be admitted on bail*”. The words “in any case” were intended to emphasize that the power to grant bail was wide enough to embrace both bailable and non-bailable offences. The power was also meant to apply to a person accused of an offence and in custody, and the words “admit to bail” had been judicially construed as having the same meaning as “release on bail”. *See Amir Chand AIR 1905 MP 53*. Moreover, the words “whether there be an appeal on conviction or not” were also unnecessary and confusing. Hence the earlier part of new sub-section (1) has been drafted in the present form.

As regards the power under head (b) mentioned above, it was contained partly in section 497(5) and partly in section 498(2) of the old Code. These two cases

together covered cancellation by a superior Court of the bail granted to a person (i) released on bail by an inferior Court in a non-bailable offence ; and (ii) released on bail under special powers by the superior Court itself. Thus the old provisions did not cover cancellation of bail granted in a case relating to a bailable offence under old section 496.

High Court's power to cancel bail.—It was, however, well-established that the High Court had power to cancel the bail even where it was granted in a case relating to bailable offence. The existence of this power of the High Court had been put beyond doubt by the Supreme Court in *Talab Haji Husain v. M.P. Mondkar* AIR 1958 SC 376; *Ratilal Bhanji v. Asstt. Collector of Customs* AIR 1967 SC 1639 and *Pampapathy* AIR 1967 SC 286. The absence of an express provision in this respect was described as “lacuna” in *Talab's* case. Hence sub-section (2) [which corresponds to section 498(2)] now applies to release on bail under this Chapter.

Notice to Public Prosecutor.—As regards the proviso to sub-section (1) which is new it has been made with a view to make it more difficult for persons accused of grave offences to get released on bail by an *ex parte* order, and be in a position to hamper investigation so that in every case where the offence is punishable with death or imprisonment for life, or is triable exclusively by a Court of Session, no court shall grant bail except after giving notice in writing of the application to the Public Prosecutor ; if this is not done, reasons for not giving such notice are to be recorded in writing.

Section 439 not controlled by section 437.—The provisions of section 439 are not controlled by those contained in section 437. The ‘Court’ referred to in section 437(1) is other than the High Court or the Court of Session. The bar contained in section 437(1) does not control the powers exercisable under section 439. The provisions in the two sections are distinct. The second part of section 439(1)(a) only relates to conditions of bail and not considerations for bail. The substance of that provision is that the High Court or the Court of Session may direct any person accused of an offence and in custody to be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purpose mentioned in that sub-section—*Sasti Charan Mandal, In re.* 1974 Cr. LJ 1326. An order granting or refusing bail will not be in exercise of revisional jurisdiction under section 397. It will rather be in exercise of independent jurisdiction under section 439—*Vijaya Nand v. State of HP* ILR 1975 HP 556.

High Court's power to cancel bail.—Section 439(1) confers special powers on the High Court or the Court of Session in respect of bail. Unlike under section 437(1), there is no ban imposed under section 439(1) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. When the accused approaches the High Court or the Court of Session, it will have to exercise its judicial discretion in considering the question of granting of bail under section 439(1) by considering several factors such as the nature and gravity of the circumstances in which the offence is committed, the likelihood of the accused fleeing from justice and his tampering with witnesses, etc. But the question of cancellation of bail under section 439(2) is certainly different from admission to bail under section 439(1). Under section 439(2), the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. Under old section 498(2), a person who had been admitted to bail by the High Court or the Court of Sessions

could be committed to custody only by that court. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new section 439(2) so that now a High Court may commit a person released on bail under Chapter XXXIII by any court including the Court of Session, to custody if it thinks appropriate to do so.

In the instant case, the Sessions Judge did not take into proper account the grave apprehension of the prosecution that there was a likelihood of the accused persons tampering with the prosecution witnesses which was urged before him in resisting the application for bail. *Held*, the High Court had correctly appreciated the entire position. The Supreme Court, therefore, did not interfere, under article 136 of the Constitution, with the High Court's exercise of discretion in cancelling the bail of the accused—*Gurcharan Singh v. State* (Delhi Administration) AIR 1978 SC 179.

Power conferred on Court of Session also.—Sub-section (2) of section 439 is redrafted with the substitution of the word 'this Chapter' for 'sub-section' in old section 498 in order to give expressly the powers not only to the High Court, which has in addition its inherent powers but also to the Court of Session to cancel bail even in cases of bailable offences—*State of Maharashtra v. Tukaram Shiva Patil* 1977 Cr. LJ 394.

Guidelines for cancelling bail.—In the following cases the principles for cancelling bail have been most clearly stated by the Supreme Court :

1. *Talab Haji Husain v. M.P. Mondkal* AIR 1958 SC 376.
2. *State v. Jagjit Singh* [1962] 3 SCR 622.
3. *Ratilal Bhanji v. Assistant Collector of Customs* AIR 1967 SC 1639.
4. *Hajarilal Gupta v. Rameshwar Prasad* AIR 1972 SC 484.
5. *Gurcharan Singh v. State* (Delhi Administration) AIR 1978 SC 179.
6. *Delhi Administration v. Sanjay Gandhi* AIR 1978 SC 961.

The High Court and even the Sessions Court have powers to cancel the bail granted earlier pending the trial or investigation under section 439(2). The High Court can further cancel it in exercise of its inherent jurisdiction under section 482, apart from powers under article 227 of the Constitution—*State of Maharashtra v. Tukaram Shiva Patil* 1977 Cr. LJ 394.

Cancellation of bail obtained by hoodwinking a Magistrate.—No fetter is put on the powers of the Sessions Court to cancel the bail order by section 439. It is not necessary that some new circumstances should take place subsequent to the offender's release on bail for the Sessions Judge to direct the arrest of the offender and commit him to custody. To read section 439(2) in such a way will result in grave and patent miscarriage of justice. If the Sessions Judge fails to perform the statutory duty, the Court can intervene under article 227 of the Constitution. Bail obtained by hoodwinking Magistrate can be cancelled. Refusal to cancel bail in such circumstance is failure to exercise jurisdiction—*State of Gujarat v. Hirasingh Kesarsingh* 1977 Cr. LJ 104.

Cancellation of bail for tampering with witnesses.—In *Delhi Administration v. Sanjay Gandhi*, the Supreme Court cancelling the anticipatory bail for a month of the accused for abusing his liberty by attempting to suborn prosecution witnesses, has observed that the power to take back into custody an accused who has been enlarged on bail has to be exercised with care and

circumspection. But the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. The refusal to exercise that wholesome power in such cases, few though they may be, will reduce the court to a 'dead letter' and will suffer the courts to be a silent spectator to the subversion of the judicial process. The Supreme Court in this case was disposing an appeal filed against the judgment of the High Court refusing to cancel bail, under article 136 of the Constitution of India. The Court cited the cases of *Talab Haji Husain* and *Gurcharan Singh* in which the court had held that there was a likelihood of the accused tampering with the prosecution witnesses. Dwelling at length with question of grant and subsequent cancellation of bail, the court said that rejection of bail when bail is applied for is one thing. Cancellation of bail already granted is quite another. It was easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involved a review of decision already made and could by and large be permitted if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

The fact that prosecution witnesses turned hostile, it could not by itself justify the inference that the accused has won them over.

The objective fact that witnesses have turned hostile must be shown to bear a casual connection with the subjective involvement therein of the accused. Without such proof, a bail once granted cannot be cancelled on the off chance or on the supposition that witnesses have been won over by the accused, the judgment added.

The prosecution can establish its case in an application for cancellation of bail by showing on a preponderance of probabilities that the accused has attempted to tamper or has tampered with its witness. Proving by the test of balance of probabilities that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice is all that is necessary for the prosecution to do in order to succeed in an application for cancellation of bail.

No power to suspend bail order.—Section 439(2) does not empower the Sessions Judge to stay the operation of the bail order. It only empowers him to cancel bail and order arrest of a person released on bail. The High Court can under section 482 suspend the operation of a bail order to prevent abuse of process of court or meet ends of justice. A Sessions Judge has, however, no such power—*Rameshwar Prasad v. State* 1975 Cr. LJ 658.

Bail and approver.—An approver, while in custody, is a witness appearing in the case against other persons who may be accused of an offence. When he is granted pardon and made approver, he ceases to be accused. Therefore, there is no apparent conflict between section 306(4)(b) and section 439. The prohibition contained in section 306(4)(b) has to be sustained as long as the trial lasts. From the opening words of section ("a person accused of an offence and in custody be released on bail") it is clear that section 439 does not apply to an approver—*Tula Ram v. State of HP* ILR 1975 HP 302.

Bail in case of DIR.—The powers of the High Court to grant or refuse bail under section 439 remain unaffected by rule 184 or any provision of the Defence and Internal Security of India Act, 1971. The High Court may grant or refuse bail even in a case of contravention of rule or order under DIR Act, 1971 although bail

can only be granted in a certain contingency. Even though the cases under DIR Act, 1971 are triable by Special Tribunals, the High Court's statutory power of granting bail is neither excluded nor affected. When in such a case the High Court grants bail it does not interfere with the conduct of trial or any proceeding before the Special Tribunal—*Vijaya Nand v. State of HP* ILR 1975 HP 556 and *Ishwar Chandra v. State of HP* 1976 Cr. LJ 386.

A private person can apply.—There is no bar to private person moving for cancellation of bail. Section 437(2) does not contain any prohibition in this respect—*Bhagirath v. Govind* ILR 1975 HP 629.

Amount of bond and reduction thereof.

440. (1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

NOTES

This section incorporates the provisions contained in section 498 (first and last parts). There is no change in the old provisions.

Bond of accused and sureties.

441. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

NOTES

Inquiry under sub-section (4) by Magistrate himself.—This section corresponds to section 499 of the old Code. There are only two modifications in the old provision. First, sub-section (2) of the present section has been newly added as a consequence of the new provision contained in section 437(3) regarding conditional bail. Secondly, sub-section (4) enables the court to cause an inquiry to be made by a subordinate Magistrate into the sufficiency or fitness of sureties. The old provision permitted only the Court itself to make an inquiry, if necessary. In recommending the new provision, the Joint Committee of Parliament observed :

"The Committee was given to understand that the provision as made in original sub-clause (4) may result in avoidable hardship and harassment to the sureties at the hands of persons who are authorised to make further inquiries by the Court. If such inquiry is made by the Magistrate himself or any subordinate Magistrate, as in the case of bonds executed for the purposes of Chapter VIII, this difficulty would be met. The amendment in the clause is intended to secure this purpose."

Discharge from custody.

442. (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 436 or section 437 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Power to order sufficient bail when that first taken is insufficient.

443. If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Discharge of sureties.

444. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

Deposit instead of recognizance.

445. When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

NOTES

Sections 442 to 445 correspond to sections 500 to 502 and 513 of the old Code, respectively, without any change in the old provisions.

Procedure when bond has been forfeited.

446. (1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that

Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited,

or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited,

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation : A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code :

[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

NOTES

This section incorporates the provisions contained in section 514 of the old Code. The principal changes made in the old provisions are indicated below :

Forfeiture of bond for appearance—Doubts cleared.—Sub-section (1) clarifies the following doubts with regard to old section 514(1) expressed by the High Courts :

- a. whether, in the case of a bond for appearance in a particular Court, that Court alone could forfeit it or whether any first class Magistrate had that power ; and
- b. whether a bond for appearance before a Court could be forfeited by the Court to which the case was later transferred.

Provisions of new Code to apply.—Merely because the surety had executed a bond prior to the coming into force of the new Code, it could not be said that procedure for recovering the amount under the bond should be the one provided by the old Code. Since the steps to enforce the bond were taken for the

first time after coming into force of the new Code, it must necessarily follow that the provisions of the new Code would apply to such proceedings and not the proceedings under the old Code, in view of section 484(2). Section 446(1) does not provide for the detention of the surety in civil jail—*L.P. Amare v. State of Maharashtra* 1976 UCR (Bom.) 141.

Amendment Act, 1980.—A proviso has been added to sub-section (2) by the Amendment Act, 1980 with effect from 23-9-1980. The provision in the Code in regard to the liability of a surety was considered unsatisfactory, there being no provision in it to deal with surety if the penalty, he is bound to pay on the forfeiture of his bond, is not paid or cannot be recovered. The new proviso provides for making a surety in such circumstances liable to imprisonment in a civil jail.

[Cancellation of bond and bail-bond.]

446A. *Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition—*

- (a) *the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and*
- (b) *thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:*

Provided *that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.]*

NOTES

Amendment Act, 1980.—This new section has been inserted by the Amendment Act, 1980 with effect from 23-9-1980. In addition to the provisions of section 446 dealing with the procedure when a bond is forfeited, this new section provides for cancellation of such a bond.

Procedure in case of insolvency or death of surety or when a bond is forfeited.

447. *When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 446, the Court by whose order such bond was taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.*

Bond required from minor.

448. *When the person required by any Court, or officer to execute a bond is a minor such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.*

Appeal from orders under section 446.

449. All orders passed under section 446, shall be appealable—

- (i) in the case of an order made by a Magistrate, to the Sessions Judge ;
- (ii) in the case of an order made by a Court of Session, to the Court to which an appeal lies from an order made by such Court.

Power to direct levy of amount due on certain recognizances.

450. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond for appearance or attendance at such High Court or Court of Session.

NOTES

Appeals to Sessions Judge whose orders also appealable.—Sections 447 to 450 correspond to sections 514A, 514B, 515 and 516 of the old Code, respectively. There is only one change (in section 449) in respect of Appeals. In view of the separation of the judiciary, appeals from orders under section 446 made by a Magistrate will now lie to the Sessions Judge instead of to the District Magistrate under the old provision and the orders of the Sessions Judge have also been made appealable.

CHAPTER XXXIV

DISPOSAL OF PROPERTY

Order for custody and disposal of property pending trial in certain cases.

451. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation : For the purposes of this section “property” includes—

- (a) property of any kind or document which is produced before the Court or which is in its custody,
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

NOTES

Section comprehensive to include material and documentary exhibits.—This section corresponds to section 516A of the old Code, but it has now been made comprehensive so as to include material and documentary exhibits in the case which may not have been used for the commission of offence, etc.

Order for disposal of property at conclusion of trial.

452. (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

NOTES

This section combines the provisions contained in sections 517 and 518 of the old Code. The following changes have been made in the old provisions :

1. Reference to High Court omitted.—Old section 517(2) had provided for delivery of property by the High Court or Court of Session through its own officers ; if that was not possible it could direct the DM to carry out the order. With the abolition of the ordinary criminal jurisdiction of High Courts this provision has become practically unnecessary for them.

2. Delivery of property on furnishing security.—Sub-section (4) of section 517 of the old Code was expressed in the negative form. The object of that sub-section, however, was to enable a Court to deliver the property to any person on his furnishing sufficient security to produce the property as and when required. New sub-section (2) of the present section has accordingly been put in the positive form.

3. Order liable to be set aside on revision.—Since an order under sub-section (1) of the section is liable to be modified or set aside in revision as well as on appeal the words "or in revision" have been added at the end of sub-section (2).

4. Stay order for two months.—The original period for staying the order of disposal of property at the conclusion of a trial was one month in old section 517(3). It has now been increased to two months [sub-section (4)] “since the period of limitation is now more than one month for certain criminal appeals”.

5. Delegation of function to CJM by Sessions Court only.—In view of the fact that the Code has allotted the function of disposal of property to Judicial Magistrates, sub-section (3) provides that delegation under that sub-section should be to the CJM instead of “to the DM or to a SDM”. Hence the delegation will be available only to a Court of Session and not to any subordinate Court.

6. Order of disposal only when property remains to be disposed of by Court.—An order for disposal of property under section 452(1) is necessary where the property remains to be disposed of by the Court after the inquiry or trial is over. In *Remo Paul Attoe v. Union of India* AIR 1977 SC 2255, where the foreign currency seized from the appellant was not produced before the Magistrate and was not in the custody or control of the court, when the order of confiscation thereof was made, the court set aside the order of confiscation passed by the Magistrate.

7. Power of delegation only to Sessions Judge.—In a case where the Magistrate passed an order requiring the return of seized articles to the concerned owners “after ascertaining their ownership from the records and circumstances”, it was held that this amounted to delegation of power to unspecified authority. It was not in accordance with section 452(3). Delegation under that section is available only to a Court of Session and not to any subordinate criminal court. The Magistrate has to take the case on file and ascertain the persons entitled to possession and order disposal by delivery to such persons—*D.B. Gandhi v. State of Karnataka* 1977 Cr. LJ 81.

Payment to innocent purchaser of money found on accused.

453. When any person is convicted of any offence which includes or amounts to, theft or receiving stolen property, and it is proved that any other person bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Appeal against orders under section 452 or section 453.

454. (1) Any person aggrieved by an order made by a Court under section 452 or section 453, may appeal against it to the Court to which appeals ordinarily lie from convictions by the former Court.

(2) On such appeal, the Appellate Court may direct the order to be stayed pending disposal of the appeal, or may modify, alter or annul the order and make any further orders that may be just.

(3) The powers referred to in sub-section (2) may also be exercised by a Court of appeal, confirmation or revision while dealing with the case in which the order referred to in sub-section (1) was made.

NOTES

Section 453 corresponds to section 519 of the old Code. There is no change in the old provision.

Right of appeal against orders passed under the preceding two sections.—Section 454 corresponds to section 520 of the old Code. The language of old section 520 was somewhat ambiguous and there was a conflict of judicial decisions on its interpretation as to whether there was or was not an independent right of appeal conferred on any party against an order passed under any of the three preceding sections. That section has therefore been altered, conferring a right of appeal on any person aggrieved by a Court's order under section 452 or 453. Apart from resolving conflicting judicial decisions, the provision was considered necessary because the party aggrieved by the order under those sections might not be the same as the party aggrieved by the main judgment.

Destruction of libellous and other matter.

455. (1) On a conviction under section 292, section 293, section 501 or section 502 of the Indian Penal Code (45 of 1860), the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession of power of the person convicted.

(2) The Court may, in like manner, on a conviction under section 272, section 273, section 274 or section 275 of the Indian Penal Code (45 of 1860), order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed.

Power to restore possession of immovable property.

456. (1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property :

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

(2) Where the Court trying the offence has not made an order under sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.

(3) Where an order has been made under sub-section (1), the provisions of section 454 shall apply in relation thereto as they apply in relation to an order under section 453.

(4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

NOTES

Section 455 corresponds to section 521 of the old Code, there is no change in the old section.

Section 456 corresponds to section 522 of the old Code. The changes made in the old provisions are indicated below:

Eviction by force if necessary.—While old section 522 enabled the Criminal Court to order restoration of possession of property to the person who had been forcibly dispossessed of that property, it did not indicate how exactly this order was to be carried out. In the absence of an express power to evict by force, if necessary, the person in actual possession of the property, the order of the Court might remain ineffective. This defect has been removed by using the words “after evicting by force, if necessary,” in sub-section (1).

Period of limitation applicable to Court of appeal also.—This sub-section is a reworded sub-section (3) of section 522 of the old Code. The rewording set at rest conflict of judicial decisions as to whether the period of one month from the date of the conviction for the restoration of the property [as mentioned in the proviso to sub-section (1)] applies to the Court of Appeal or Revision

Independent right of appeal and appellate Court's power to modify trial Court's order.—This is a new sub-section conferring an independent right of appeal upon any person aggrieved by an order made under sub-section (1). It also gives the Court of Appeal, revision or confirmation dealing with the main case, the power to modify, alter or annul an order made by the trial court under this section, as in the case of orders for the disposal of property.

Procedure by police upon seizure of property.

457. (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

NOTES

Report to Magistrate of all properties seized.—This section corresponds to section 523 of the old Code. The old section provided for the report of property seized by the police officer under section 51 or section 550 to a Magistrate. There were other sections in the old Code which empowered the police to seize property and they also provided that the police officer should report seizure to a Magistrate. The present section, therefore, refers generally to all cases where the seizure of property by a police officer is reported to a Magistrate and not

only to seizures under particular sections. Property produced before a criminal court during an inquiry of trial has been excluded from the scope of section 457 as it has been dealt with under section 451 *et seq.*

Procedure where no claimant appears within six months.

458. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed.

(2) An appeal shall lie against any such order to the Court to which appeals ordinarily lie from convictions by the Magistrate.

Power to sell perishable property.

459. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than ten rupees, the Magistrate may at any time direct it to be sold ; and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

NOTES

Power of State Government to sell property.—Section 458 corresponds to section 524 of the old Code. The old section has been revised so as to make it clear that after a Magistrate has made a lawful order that the property shall be at the disposal of the State Government it may be sold by that Government (and not the Magistrate as was the case under the old section) and the proceeds of the sale may be dealt with in the prescribed manner.

Section 459 corresponds to section 525 of the old Code. There is no change in the old section.

CHAPTER XXXV

IRREGULAR PROCEEDINGS

Irregularities which do not vitiate proceedings.

460. If any Magistrate not empowered by law to do any of the following things, namely :—

- (a) to issue a search-warrant under section 94 ;
- (b) to order, under section 155, the police to investigate an offence ;
- (c) to hold an inquest under section 176 ;
- (d) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction ;
- (e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190 ;
- (f) to make over a case under sub-section (2) of section 192 ;

- (g) to tender a pardon under section 306 ;
- (h) to recall a case and try it himself under section 410 ; or
- (i) to sell property under section 458 or section 459;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

461. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely : —

- (a) attaches and sells property under section 83 ;
- (b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority ;
- (c) demands security to keep the peace ;
- (d) demands security for good behaviour ;
- (e) discharges a person lawfully bound to be of good behaviour ;
- (f) cancels a bond to keep the peace ;
- (g) makes an order for maintenance ;
- (h) makes an order under section 133 as to a local nuisance ;
- (i) prohibits, under section 143, the repetition or continuance of a public nuisance ;
- (j) makes an order under Part C or Part D of Chapter X ;
- (k) takes cognizance of an offence under clause (c) of sub-section (1) of section 190 ;
- (l) tries an offender ;
- (m) tries an offender summarily ;
- (n) passes a sentence, under section 325, on proceedings recorded by another Magistrate ;
- (o) decides an appeal ;
- (p) calls, under section 397, for proceedings ; or,
- (q) revises an order passed under section 446, his proceedings shall be void.

Proceedings in wrong place.

452. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

NOTES

Sections 460, 461 and 462 correspond to sections 529, 530 and 531 of the old Code, respectively. There are practically no changes in the old provisions.

Non-compliance with provisions of section 164 or section 281.

463. (1) If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under section 164 or section 281, is tendered, or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to Courts of appeal, reference and revision.

NOTES

No defect if substantial compliance with sections 164 or 281.—This section corresponds to section 533 or the old Code. The old section provided that if the Court, before which a statement of confession of the accused person purporting to be recorded under old section 164 or old section 364 was tendered in evidence, found that any of the provisions of those sections had not been complied with by the Magistrate recording the statement or confession, it should “take evidence that such person duly made the statement recorded”. This provision had given rise to conflicting interpretations on two aspects: first, statement or confession, “duly made”, and secondly, statement or confession, duly made, “recorded properly”. As observed by the Law Commission :

“In the first case, section 533 should not apply, because, to apply the section in such cases would defeat the very object of sections 164 and 364, thereby depriving the accused of beneficial provision on a matter on which the law has always shown its anxious concern. It is only the second kind of defect – defect in recording – that should be curable. The Magistrate should have complied with the substantial provisions of section 164, and there can be no saving for a non-compliance on that account. If such compliance is not apparent from the record, it can be proved otherwise. That is all that section 533 is intended to provide for.”

That this was the intention of the old section had also been confirmed by the Supreme Court in *State of U.P. v. Singhara Singh* AIR 1964 SC 358. Sub-section (1), therefore, clarifies that the evidence given should relate to the apparent non-compliance with the statutory provisions.

Effect of omission to frame, or absence of, or error in, charge.

464. (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may –

- (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge ;

- (b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit :

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

NOTES

Errors in charge provisions combined.—This section corresponds to section 535 of the old Code. However, the section has been so drafted as to combine into one the provisions contained in old sections 232, 535 and 537(b) which dealt with the subject of errors in charge.

Re-trial in case of an error in charge.—Another significant change made in the old provision is that a re-trial in the event of an error, etc., in the charge should not be mandatory unlike in the old section 535. In this connection the Law Commission observed :

“In several reported cases, Courts have in the interests of justice refrained from ordering a re-trial, as for instance, when the accused had already undergone sufficient punishment—*Hosseni Sardar v. Kalu Sardar* 1902 ILR 29 Cal. 481 or when the evidence was considered insufficient to support a conviction—*Nemain Adak v. State* AIR 1966 Cal. 89. It would be better to make the provision for ordering re-trial discretionary so that a Court could pass an order appropriate in the particular circumstances of a case.”

Finding or sentence when reversible by reason of error, omission or irregularity.

465. (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Defect or error not to make attachment unlawful.

466. No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ or attachment or other proceedings relating thereto.

NOTES

Defect in sanction for prosecutions.—Section 465 corresponds to section 537 of the old Code. The general provision regarding irregularities in complaints,

summons, warrants, orders, judgments and other proceedings has been extended to irregularity in any sanction for prosecution also. The genesis of this extended provision is best explained in the following words of the Joint Committee of Parliament :

“The Committee was given to understand that there are quite a few cases where a prosecution ultimately fails in the Appellate Court on the ground of some defect or irregularity in the sanction for prosecution as required by law. The provision for sanction is usually made in respect of certain anti-social offences. It would undoubtedly be a frustrating experience for those entrusted with the difficult task of enforcing such laws for the protection of society if all the time, trouble and expenditure spent in prosecuting say a black marketeer or a corrupt official go to waste when the Appellate Court acquits him completely on the technical ground of an irregularity in the sanction. The Committee therefore feels that so long as there has been no failure of justice, a Court of Appeal or Revision should not set aside a conviction merely on the ground of any error or irregularity in the sanction.”

No modification in section 466.—Section 466 corresponds to section 538 of the old Code. There is no change in the old section.

CHAPTER XXXVI
LIMITATION FOR TAKING COGNIZANCE OF CERTAIN
OFFENCES

Definitions.

467. For the purposes of this Chapter, unless the context otherwise requires, “period of limitation” means the period specified in section 468 for taking cognizance of an offence.

Bar to taking cognizance after lapse of the period of limitation.

468. (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be —

- (a) six months, if the offence is punishable with fine only ;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year ;
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

Commencement of the period of limitation.

469. (1) The period of limitation, in relation to an offender, shall commence,—

- (a) on the date of the offence ; or

- (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier ; or
 - (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.
- (2) In computing the said period, the day from which such period is to be computed shall be excluded.

Exclusion of time in certain cases.

470. (1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded :

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation : In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

- (4) In computing the period of limitation, the time during which the offender —
- (a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or
 - (b) has avoided arrest by absconding or concealing himself, shall be excluded.

Exclusion of date on which Court is closed.

471. Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.

Explanation : A Court shall be deemed to be closed on any day within the meaning of this section, if during its normal working hours, it remains closed on that day.

Continuing offence.

472. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Extension of period of limitation in certain cases.

473. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

NOTES

Raison d'être for new provisions.— Sections 467 to 473 are new prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. The *raison d'être* for the new provision is best summarised by the Joint Committee of Parliament as follows :

“At present, there is no period of limitation for criminal prosecution and a Court cannot throw out a complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and the Committee feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission.

Grounds in favour of prescribing limitation.— Among the grounds in favour of prescribing the limitation may be mentioned the following :

1. As time passes the testimony of witnesses become weaker and weaker because of lapse of memory and evidence becomes more and more uncertain with the result that the danger of error becomes greater.
2. For the purpose of peace and repose it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with the multifarious laws creating new offences many persons at some time or the other commit some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.
3. The deterrent effect of punishment is impaired if prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of the persons concerned.
4. The sense of social retribution which is one of the purposes of criminal law loses its edge after the expiry of a long period.
5. The periods of limitation would put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly.

The actual periods of limitation provided for in the new clauses would, in the Committee's opinion, be appropriate having regard to the gravity of the offences and other relevant factors.

Commencement of period.—As regards the date from which the period is to be counted the Committee has fixed the date of the offence as the date of commencement of limitation. As, however, this may create practical difficulties and may also facilitate an accused person to escape punishment by simply absconding himself for the prescribed period, the Committee has also provided that when the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the period of limitation would commence from the day on which the participation of the offender in the offence first comes to the knowledge of a person aggrieved by the offence or of any police officer, whichever is earlier. Further, when it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence is the commencement date.

Provision for extension of time.—The Committee has considered it necessary to make a specific provision for extension of time whenever the Court is satisfied on the materials that the delay has been properly explained or that the accused had absconded. This provision would be particularly useful because limitation for criminal prosecution is being prescribed for the first time in the country.

Computation of limitation period.—In the new Code, there is no provision for computing the period of limitation in relation to offences which can be tried together. Section 468 has been amended by the Amendment Act, 1978 to provide that for the purpose of computing the period of limitation in relation to offences which may be tried together, the offence for which the more severe punishment or, as the case may be, the most severe punishment can be imposed shall be taken into account.

Magistrate's duty to satisfy about limitation.—Whenever a complaint or challan is filed at the instance of any person or any police officer, the Court must see that whether section 468 is attracted or not. If it does, it should not register the case but give an opportunity to the person or the police officer filing the complaint or challan to satisfy it on the point of limitation for purposes of condonation of delay. The delay should not be condoned as a matter of course. Judicial discretion should be exercised in condoning delay. Like section 5 of the Limitation Act, section 473 should also be liberally construed so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to the prosecutor. At the same time it should not be construed too liberally simply because Government is the prosecutor or prosecution is upon police report. The accused should be heard when an application under section 473 is moved by the prosecution before cognizance is taken. To take cognizance of the offence without satisfying itself about the delay and hear about the delay only on an objection taken by the accused is a novel procedure wholly contrary to law—*Krishna Sanghi v. State of MP* 1977 Cr. LJ 90.

The offence under section 323 IPC was committed on 27-10-1972, but its cognizance was taken by the Magistrate on 12-6-1975. Held, prosecution was barred under section 468(2)(b)—*Vasudeo Agrawal v. State of Bihar* 1977 Cr. LJ Note No. 55.

Inapplicability of the Chapter.—By the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), it has been provided that the provisions of Chapter XXXVI of the Code will not apply to certain economic offences. The Act is reproduced below:

THE ECONOMIC OFFENCES (INAPPLICABILITY OF LIMITATION)
ACT, 1974

An Act to provide for the inapplicability of the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 to certain economic offences.

Be it enacted by the Parliament in the Twenty-fifth Year of the Republic of India as follows :—

1. Short title, extent and commencement. (1) This Act may be called the Economic Offences (Inapplicability of Limitation) Act, 1974.

(2) It extends to the territories to which the Code of Criminal Procedure, 1973 (2 of 1974) applies.

(3) It shall come into force on the 1st day of April, 1974.

2. Chapter XXXVI of the Code of Criminal Procedure, 1973 not to apply to certain offences. Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to—

(i) any offence punishable under any of the enactments specified in the Schedule ; or

(ii) any other offence, which under the provisions of that Code, may be tried along with such offence,

and every offence referred to in clause (i) or clause (ii) may be taken cognizance of by the Court having jurisdiction as if the provisions of that Chapter were not enacted.

THE SCHEDULE

[See section 2]

1. The Indian Income-tax Act, 1922 (11 of 1922).
2. The Income-tax Act, 1961 (43 of 1961).
3. The Companies (Profits) Surtax Act, 1964 (7 of 1964).
4. The Wealth-tax Act, 1957 (27 of 1957).
5. The Gift-tax Act, 1958 (18 of 1958).
6. The Central Sales Tax Act, 1956 (74 of 1956).
7. The Central Excises and Salt Act, 1944 (1 of 1944).
8. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).
9. The Customs Act, 1962 (52 of 1962).
10. The Gold (Control) Act 1968 (45 of 1968).
11. The Imports and Exports (Control) Act, 1947 (18 of 1947).
12. The Foreign Exchange Regulation Act, 1947 (7 of 1947).
13. The Foreign Exchange Regulation Act, 1973 (46 of 1973).
14. The Capital Issues (Control) Act, 1947 (29 of 1947).
15. The Indian Stamp Act, 1899 (2 of 1899).

16. The Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962).
17. The Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962).
18. The Emergency Risks (Goods) Insurance Act, 1971 (50 of 1971).
19. The Emergency Risks (Undertakings) Insurance Act, 1971 (51 of 1971).
20. The General Insurance Business (Nationalisation) Act, 1972 (57 of 1972).

CHAPTER XXXVII
MISCELLANEOUS

Trials before High Courts.

474. When an offence is tried by the High Court otherwise than under section 407, it shall, in the trial of the offence, observe the same procedure as a Court of Session would observe if it were trying the case.

NOTES

This is a new provision made for those rare cases where the High Court has to try an offence (in exercise of its extraordinary criminal jurisdiction).

Delivery to commanding officers of persons liable to be tried by Court-martial.

475. (1) The Central Government may make rules, consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950), and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by a Court-martial.

Explanation : In this section—

- (a) “unit” includes a regiment, corps, ship, detachment, group, battalion or company,
 - (b) “Court-martial” includes any tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.
- (2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.
- (3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situate within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial.

NOTES

Only verbal changes in old sections.—This section incorporates the provisions contained in sections 491(1)(d) and 549 of the old Code. Only verbal changes have been made in the old provisions. They are :

- a. Reference to old Acts has been replaced by the relevant Acts now in force.
- b. The provisions contained in the section applies also to the other Armed Forces of the Union in respect of which appropriate law has made provision for Court-martial.
- c. The comprehensive word 'unit' has been used instead of regiment, etc., unlike in the old provision.
- d. The *Explanation* defines the words "unit" and "Court-martial".

Forms.

476. Subject to the power conferred by article 227 of the Constitution, the forms set forth in the Second Schedule, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

NOTES

Old Forms suitably modified.—This section corresponds to section 555 of the old Code. The reference to old section 554 made in section 555 has been omitted, in view of the omission of the former section in the new Code. The omission is on account of the fact that the subject-matter of old section 554 is fully covered by clauses (2) and (3) of article 227 of the Constitution.

The Forms contained in Schedule V of the old Code have been suitably modified to conform to changes or provisions made in the new Code. Most of the Forms do not contain any change of substance. On account of omission of certain provisions of the old Code the corresponding Forms have also been done away with. By the Amendment Act, 1978, Forms Nos. 34, 41 and 42 have been amended to clarify that they can be used for purposes of some other sections also. Form Nos. 44A and 47 to 56 have been newly added.

Power of High Court to make rules.

477. (1) Every High Court may, with the previous approval of the State Government, make rules—

- (a) as to the persons who may be permitted to act as petition-writers in the Criminal Courts subordinate to it ;
- (b) regulating the issue of licences to such persons, the conduct of business by them, and the scale of fees to be charged by them ;
- (c) providing a penalty for a contravention of any of the rules so made and determining the authority by which such contravention may be investigated and the penalties imposed ;
- (d) any other matter which is required to be, or may be, prescribed.

(2) All rules made under this section shall be published in the Official Gazette.

NOTES

Section 477 is substantially the same as section 555A of the old Code.

[Power to alter functions allocated to Executive Magistrates in certain cases.]

478. *If the Legislative Assembly of a State by a resolution so permits, the State Government may, after consultation with the High Court, by notification, direct that references in sections 108, 109, 110, 145 and 147 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class.]*

NOTES

Power of State Legislature to alter arrangements for taking security proceedings in consultation with High Court.—This section is new. In connection with this section the Joint Committee of Parliament had observed :

“... relating to security proceedings the powers under those sections should be exercised only by the Judicial Magistrates as a safeguard against their abuse. Similarly, in respect of the disputes as to immovable property, ... the power should be exercised only by the Executive Magistrate as the main purpose is related to the maintenance of law and order. The present clause confers on the State Government the power to alter this arrangement by means of notification. The Committee was made to understand that this provision is necessary to enable individual State Government to have a choice in this regard. It was also stated that under the existing scheme of separation of judiciary from the executive in the various States, these powers have been allotted to the judiciary in some States, while in some other States they have been allocated to the executive, and that to fit in with the existing arrangement this provision is necessary. The Committee feels that the Executive/Government should not have this power of disturbing the arrangement proposed in this Bill after due consideration by Parliament. The Committee agrees that the State must have a voice in the matter but the appropriate thing to do would be to leave it for the decision of the Legislature of the States concerned rather than to the Executive/Government only. ... This will be in addition to the safeguard already provided in the clause, namely, consultation with the High Court.”

Amendment Act, 1978.—The Amendment Act, 1978 has substituted “State Legislative Assembly of a State” for “State Legislature” and “permits” for “requires” to obviate the necessity of getting the “resolution” made by both the Houses of State Legislature. Legislative Assembly can now permit the State Government to alter the functions allocated to Judicial Magistrate to Executive Magistrate.

Amendment Act, 1980.—Section 478, as amended by the Amendment Act, 1978, has been recast consequent upon the amendments made in sections 108, 109 and 110 by the Amendment Act, 1980 empowering “Executive Magistrates” in place of “Judicial Magistrate of the First Class” to take security proceedings. The substituted section is effective from 23-9-1980.

Case in which Judge or Magistrate is personally interested.

479. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear, an appeal from any judgment or order passed or made by himself.

Explanation : A Judge or Magistrate shall not be deemed to be a party to, or personally interested in, any case by reason only that he is concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed or any other place in which any other transaction material to the case is alleged to have occurred and made an inquiry in connection with the case.

Practising pleader not to sit as Magistrate in certain Courts.

480. No pleader who practises in the Court of any Magistrate shall sit as a Magistrate in that Court or in any Court within the local jurisdiction of that Court.

Public servant concerned in sale not to purchase or bid for property.

481. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Saving of inherent powers of High Court.

482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.

483. Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

NOTES

No substantial change in old sections.—Section 479 corresponds to section 556 of the old Code with the omission of the illustration to the old section. Section 480 corresponds to section 557 of the old Code with the omission of reference to presidency town or district in the old section. Sections 481 and 482 correspond to sections 560 and 561A of the old Code respectively without any change in the old provisions.

Purpose of section 482.—The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceedings ought not to be permitted to degenerate into a weapon of harassment or prosecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature.

The object and purpose of this provision which enables the High Court to do justice between the State and its subjects has to be properly realised and the width and contours of that salient jurisdiction appreciated—*State of Karnataka v. L.M. Muniswamy* AIR 1977 SC 1489.

Section 482 does not confer arbitrary powers.—Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Thus, the High Court in exercise of the inherent powers under section 482 cannot quash a first information report mere so when the police had not even commenced the investigation and no proceeding at all is pending in any court in pursuance of the said FIR—*Kurukshetra University v. State of Haryana* AIR 1977 SC 2229.

Section 482 does not confer any new powers but preserves the powers which the High Court already possessed. It is well settled that the inherent powers of the court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision barring a particular remedy, the court cannot resort to the exercise of inherent powers. Where, therefore, a revision to the High Court against the order of the subordinate judge is expressly barred under section 397(2), the inherent powers contained in section 482 would not be available to defeat the bar contained in section 397(2)—*Amar Nath v. State of Haryana* AIR 1977 SC 2185.

Exercise of inherent power in relation to interlocutory order.—The following principles were stated in relation to the exercise of the inherent power of the High Court :

1. The power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party.
2. It should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice.
3. It should not be exercised as against the express bar of law engrafted in any other provision of the Code.

The bar provided in section 397(2) operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court, will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice, interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court.

The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The instant case wherein the order impugned rejected the application challenging the jurisdiction of the Court to proceed with the trial, undoubtedly fell for exercise of the power of the High Court in accordance with section 482, even assuming, although not accepting that invoking the revisional power of the High Court is impermissible—*Madhu Limaye v. State of Maharashtra* AIR 1978 SC 47. To the above extent, the case of *Amar Nath* AIR 1977 SC 2185 held not correctly decided.

It should not be exercised in regard to matters specifically covered by other provisions of the Code—*Gopal Dass v. State* AIR 1978 Delhi 138.

Inherent power to quash order.—It is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute an offence it is competent to the High Court exercising its inherent jurisdiction under section 482 to quash the order passed by the Magistrate taking cognizance of the offence—*Sharda Prasad v. State of Bihar* AIR 1977 SC 1754.

High Court to supervise subordinate courts.—Section 483 is new specifically requiring the High Court to supervise subordinate courts so that cases are disposed expeditiously.

Superintendence only on subordinate courts and not on Executive.—Section 483 is attracted only when the impugned order is made or passed by a criminal court. This power cannot be invoked to remedy a wrong done by an executive action or order, for instance detention order under MISA, even if made in excess or abuse of the powers—*Tikam Chand v. K. Bora* 1976 Cr. LJ 1801.

Repeal and savings.

484. (1) The Code of Criminal Procedure, 1898 (5 of 1898), is hereby repealed.

(2) Notwithstanding such repeal,—

- (a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), as in force immediately before such commencement, (hereinafter referred to as the Old Code), as if this Code had not come into force :

Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code ;

- (b) all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively, to have been published, issued, conferred, prescribed, defined, passed, or made under the corresponding provisions of this Code ;
- (c) any sanction accorded or consent given under the Old Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Code and proceedings may be commenced under this Code in pursuance of such sanction or consent ;
- (d) the provisions of the Old Code shall continue to apply in relation to every prosecution against a Ruler within the meaning of article 363 of the Constitution.

(3) Where the period prescribed for an application or other proceeding under the Old Code had expired on or before the commencement of this Code,

nothing in this Code shall be construed as enabling any such application to be made or proceeding to be commenced under this Code by reason only of the fact that a longer period therefor is prescribed by this Code or provisions are made in this Code for the extension of time.

NOTES

New Code—Its application and exceptions.—This new section contains provisions regarding repeal and savings. With a view to make the transition from the old Code to the new one smooth, it has been provided that any investigation, inquiry, trial or appeal commenced before the coming into force of the new Code shall be continued and concluded under the old law. The new provisions would apply to the subsequent stages of these proceedings as also to any proceedings initiated after the commencement of the new Code. There are only two exceptions to this.

First, preliminary inquiries in Sessions cases which are pending on the date of commencement of the new Code will not be continued under the old Code [see Proviso to section 484(2)(a)]. This is “to ensure that the trial of such cases are expedited”.

Secondly, Honorary Magistrates will cease to hold office at the commencement of the new Code. Fresh appointments of special Magistrates will have to be made under the new Code, if necessary.

‘Pending’—Meaning of.—The word ‘pending’ in section 484(2)(a) has to be read along with the term ‘trial’. It means ‘impending’, ‘remaining undecided’, ‘non-terminated’, ‘awaiting’, etc. From this, it is obvious that a trial which has not reached the stage of decision or termination would remain undecided and has to be treated as ‘pending’. The Legislature has undoubtedly used the word ‘pending’ as commonly applicable to the words appeal, application, trial, inquiry or investigation. Even a stage of awaiting or commencement is enough in a given case to indicate pendency. Undoubtedly, the pendency of each of the above will depend on matters of procedural stages involved in them and courts will have to find out as to when the same would begin to pend in considering all the relevant provisions in that regard as well as the contemplation of the statutory process having bearing upon each—*State of Maharashtra v. Chandra Shekhar* 1975 Mah. LJ 607.

The expression ‘trial pending’ in section 484(2)(a) has a wide connotation. It cannot be restricted to ‘commencement of trial’ within the meaning of section 271 of the old Code. In fact, section 484(2) along with its proviso lays down clearly what is saved as well as what is not saved, in view of the repeal of the old Code. The word ‘trial’ is not defined. In every case, therefore, it has to be construed with regard to the particular context in which it is used and the scheme and purpose of the provision under consideration—*State v. Haridas Mundhra* 1974 Cr. LJ 1340.

Application of section only to the pending proceeding at the commencement of the Code.—The present tense, used in section 484(2)(a) makes it clear that the said provision has application only to the stage at which the proceedings were pending at the commencement of the Code. This is so is evident from the words ‘as the case may be’. A contrary view may lead to the conclusion that all offences, which were being investigated on the date of commencement of the new Code should be tried under the old Code, which could not be the intention of Parliament—*Mohan Sundar Das v. Khetra Basi Das* ILR 1976 Cutt. 423.

'Disposed of'—Meaning of.—The words 'disposed of' must mean finally disposed of. According to the proviso to sub-section (2)(a) committal proceedings pending at the commencement of the new Code are required to be dealt with and disposed of in accordance with the new Code. The words 'disposed of' in the proviso clearly mean that the disposal contemplated thereby is final disposal of the proceeding. The same meaning is assigned to those words in the main part of sub-section (2)(a)—*H.N. Bhavsar v. State of Gujarat* 1976 Cr. LJ 84.

Pending trial.—If a trial is pending before Sessions Court when the new Code came into force, it is to be held in accordance with the provisions of the old Code by virtue of section 484(2)(a) of the new Code—*Karan Majhi v. State* 1976 Cr. LJ 1672. The following cases further illustrate the principle :

1. The accused having been committed on 3-4-1972, there was only the trial before the Court of Session that was pending by the date on which the new Code came into force. The date of the trial also had been fixed in the case. The context in which the word 'trial' is used should be intended to include the stage after the inquiry and committal in case exclusively triable by Courts of Session. The inquiry and committal having been over in this case, it must be held that the trial was pending in the case by the date the new Code came into force. Held, procedure prescribed in old Code for trial of Sessions cases applies—*Parashuram Prakash v. State* [1974] Mad. LJ 618.
2. The Committing Court having finished the inquiry, the papers reached the Sessions Court on 18-3-1974 and the court fixed 10-4-1974 as the date for personal appearance of the accused. Held that the trial must be regarded as pending in the Sessions Court on 1-4-1974 and would continue by that court under the old Code—*State of Maharashtra v. Chandra Shekhar* 1975 Mah. LJ 607.
3. The trial of a case commenced, as soon as the Court of Session took cognizance of the offence in terms of section 193 of the old Code. In the instant case, the Sessions Judge took cognizance of the case on 15-1-1974 and thus it became pending in his court. The trial of the case did not conclude on 1-4-1974 when the new Code came into force. Therefore, the provisions of section 484(2)(a) of the new Code will apply to it—*State of Punjab v. Mewa Singh* 1976 Cr. LJ 656.

Right of appeal under the old Code.—The right of appeal exists from the date the cognizance of the offence was taken and not from the date the judgment was pronounced. The right of the petitioner is to be governed by the old Code as the cognizance was taken under the old Code and the trial took place under the old Code, though the judgment was pronounced subsequent to the coming into force of the new Code. In section 484(2)(a) here is no provision, express or implied, which has taken away the right of appeal—*Karnika Bewa v. State* 1976 Cr. LJ 418.

Under section 6 of the General Clauses Act also, the right to continue legal proceeding and to enforce any remedy including filing of an appeal is preserved, in spite of the fact that the Act in question has been repealed. The intention of Parliament in section 484(2)(a) was that only pending proceedings should be continued and disposed of in accordance with the old Code, whereas appeals and revisions arising out of such proceedings or trials should be filed and disposed of in accordance with the new Code. In view of clause (b) of sub-section (2) of section 484 of the new Code, if the orders of conviction and sentence has been passed against an accused person in accordance with the provisions of the

old Code, prior to the coming into force of the new Code, appeals against such order after the new Code have to be filed in accordance with the provisions of the new Code—*Ram Beyas Singh v. State of Bihar* 1977 Cr. LJ 28.

Pending investigations.—When a court has already taken cognizance of an offence and the order of conviction is recorded after coming into force of the new Code, further proceedings in respect of appeal against the said order of conviction would be governed by the old Code because the right of appeal is a substantive right which accrues to the parties to the prosecution at the time when the court takes cognizance of the offence. The intention is that out of the proceedings mentioned in the section, those proceedings in which the party has no vested right are only to be continued or held or made in accordance with the old Code. On completion of such proceedings, further steps in the prosecution are to be taken according to new provision—*H.N. Bhavsar v. State of Gujarat* 1976 Cr. LJ 84.

Appeal, application, trial, inquiry or investigation are different steps in criminal prosecution. In some of them, e.g., appeal, a party to the case has a vested right but in other procedural matters there is no such vested right. Thus a police investigation initiated under the old Code has to be completed in accordance with old Code but further steps in the prosecution are to be taken according to the new Code—*Vasudeo Agrawal v. State of Bihar* 1977 Cr. LJ Note No. 55.

The present tense used in section 484(2)(a) makes it clear that the said provision has application only to the stage at which the proceedings were pending at the commencement of the Code. Pending investigation must therefore be continued in the old Code as provided therein and not the subsequent inquiry or trial—*Raman Pillay v. Dekahyami* 1975 Kr. LT 739.

Revisions.—Under section 484(2)(a), subsequent stages arising out of any proceeding pending in any court before the commencement of the new Code are not governed by the provisions of the old Code, but are governed by the provisions of the new Code. In this view of the matter, it is clear that revision petitions which arose out of the revision petitions filed before the Sessions Court after the new Code came into force are not maintainable. Sessions Judge's order dismissing revision petition before 1-4-1974 is final and no revision lies to the High Court—*G. Goudappagouda Patil v. B. Sangappa* 1975 MLJ (Cr.) 375. The intention is that once a particular stage for which the old Code was specifically kept alive is over, it would follow that parties to the litigation will have to look to the new procedural Code and avail themselves of such remedies as are available under that Code—*Janardhan Sarvatham v. State* 78 Bom. LR 380. Interference in revision being a discretionary power vested in the High Court, a revision application cannot be considered to be in continuation of the proceedings pending in the lower court—*Mohan Sundar Das v. Khetrabasi Das* ILR 1976 Cutt. 423.

Section 484(3) merely lays down that where the period prescribed for an application or other proceeding under the old Code had expired on or before 1-4-1974, the new Code cannot be construed to enable any such application to be made or proceeding to be continued under the New Code by reason of the fact that a longer period is prescribed under the new Code or provisions are made under the new Code for extension of time. The above provision expressly denies the extension of the period of limitation (for second revision) to a litigant in criminal cases—*Giriyappagowala v. Basavarajappa* ILR 1975 Kar. 1149.

In *D. Phillip v. Director, Enforcement* AIR 1976 SC 1185, the Supreme Court has observed :

"It will be seen that the word "application" in section 484(2)(a) immediately follows the term "appeal". It, therefore, takes some colour from the collation of words in which it occurs. It is synonymous with the term "petition" which means a written statement of material facts, requesting the Court to grant the relief or remedy based on those facts. It is a peculiar mode of seeking redress recognized by law. Thus considered, there can be no doubt that the word "application" as used in section 484(2)(a) will take in a revision application under section 435 of the old Code. Such a revision application does not cease to be an "application" within the purview of the aforesaid clause (a) merely because in the event of the applicant being allowed, the Sessions Judge was required to make a reference to the High Court under section 438—whether such an application is granted or dismissed by the Sessions Judge, he finally disposes of the matter so far as his Court is concerned. May be that a purely interlocutory application is pending action, which by itself is not an independent mode of seeking redress recognised by law, is not covered by the word "application" as used in the aforesaid clause (a). In the present case the revision application made by the appellant was pending before the Sessions Judge when the Code came into force. In view of section 484(2)(a) of the new Code, this revision was required to be disposed of in accordance with the old Code."

Launching prosecutions.—Section 468 regarding filing of charge-sheet within a prescribed period is not applicable to cases falling under section 484. The prosecutions' right to launch prosecution where an investigation is pending on 1-4-1974, is saved by section 484. The deeming provision of section 484 must be extended to its logical end and the saving provisions would apply not only to the pending investigations but also to the launching of prosecutions—*State v. Madhukar Hedan* 1976 Mah. LJ 77.

Reference to old Code in other enactments.—When it was objected that the Defence of India Rules did not refer to the new Code, and as such the *non obstante* clause of rule 174 of DIR would not apply to the provisions of the new Code, it was held that in view of section 8(1) of the General Clauses Act, old Code had to be read to mean the new Code.—*Subha Narayan Jhan v. State of Bihar* ILR 1976 Pat. 131.

Continuing cases.—The ground taken was that the trial by the SDM or Extra Magistrate after 1-4-1974, was illegal. Held, the powers of Magistrates remained intact for the limited purpose of continuing old cases—*Ram Kishan Agarwal v. State of UP* 1976 Cr. LJ 1984. Similarly, the power of the SDM to commit under old Code remained intact—*Visheshwar v. State* 1976 Cr. LJ 521.

Explanatory Note : (1) In regard to offences under the Indian Penal Code, the entries in the second and third columns against a section the number of which is given in the first column are not intended as the definition of, and the punishment prescribed for, the offence in the Indian Penal Code, but merely as indication of the substance of the section.

(2) In this Schedule, (i) the expression "Magistrate of the first class" and "Any Magistrate" include Metropolitan Magistrates but not Executive Magistrates; (ii) the word "cognizable" stands for "a police officer may arrest without warrant"; and (iii) the word "non-cognizable" stands for "a police officer shall not arrest without warrant".

I.—OFFENCES UNDER THE INDIAN PENAL CODE

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
1	2	3	4	5	6

CHAPTER V
Abetment

109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	Same as for offence abetted.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto	Ditto	Ditto
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Same as for offence intended to be abetted.	Ditto	Ditto	Ditto
113	Abetment of any offence, when an effect caused by the act abetted different from that intended by the abettor.	Same as for offence committed.	Ditto	Ditto	Ditto

1	2	3	4	5	6
114	Abetment of any offence, if abettor is present when offence is committed.	Same as for offence committed.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.
115	Abetment of an offence, punishable with death or imprisonment for life, if the offence be not committed in consequence of the abetment. If an act which causes harm be done in consequence of the abetment.	Imprisonment for 7 years and fine.	Ditto	Non-bailable.	Ditto
116	Abetment of an offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment. If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Imprisonment for 14 years and fine. Imprisonment extending to a quarter part of the longest term, provided for the offence, or fine, or both. Imprisonment extending to half of the longest term, provided for the offence, or fine, or both.	Ditto	Ditto	Ditto
117	Abetting the commission of an offence by the public, or by more than ten persons.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
118	Concealing a design to commit an offence punishable with death or imprisonment for life, if the offence be committed. If the offence be not committed.	Imprisonment for 7 years and fine.	Ditto	Non-bailable.	Ditto
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed. If the offence be punishable with death or imprisonment for life. If the offence be not committed.	Imprisonment for 3 years and fine. Imprisonment extending to half of the longest term provided for the offence, or fine, or both. Imprisonment for 10 years. Imprisonment extending to a quarter part of the longest term	Ditto Ditto Ditto	Bailable. According as offence abetted is bailable or non-bailable. Non-bailable. Bailable	Ditto Ditto Ditto Ditto

120	Concealing a design to commit an offence punishable with imprisonment, if offence be committed. If the offence be not committed.	provided for the offence, or fine, or both. Ditto	Ditto	Ditto	Ditto
120B	Criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of 2 years or upwards. Any other criminal conspiracy.	Same as for abetment of the offence which is the object of the conspiracy. Imprisonment for 6 months, or fine, or both.	According to the offence which is the object of conspiracy is cognizable or non-cognizable. Non-cognizable.	According to offence which is object of conspiracy is bailable or non-bailable. Bailable.	Court by which abetment of the offence which is the object of conspiracy is triable. Magistrate of the first class.
121	Waging or attempting to wage war, or abetting the waging of war, against the Government of India.	Death or imprisonment for life and fine.	Cognizable.	Non-bailable.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
122	Collecting arms, etc., with the intention of waging war against the Government of India.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
123	Concealing with intent to facilitate a design to wage war.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto

CHAPTER VA

Criminal conspiracy

CHAPTER VI

Offences against the State

1	2	3	4	5	6
124	Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.	Imprisonment for 7 years and fine.	Cognizable	Non-bailable	Court of Session
124A	Sedition.	Imprisonment for life and fine or imprisonment for 3 years and fine or fine.	Ditto	Ditto	Ditto
125	Waging war against any Asiatic power in alliance or at peace with the Government of India, or abetting the waging of such war.	Imprisonment for life and fine, or imprisonment for 7 years and fine, or fine.	Ditto	Ditto	Ditto
126	Committing depredation on the territories of any power in alliance or at peace with the Government of India.	Imprisonment for 7 years and fine, and forfeiture of certain property.	Ditto	Ditto	Ditto
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto	Ditto	Ditto	Ditto
128	Public servant voluntarily allowing prisoner of State or war in his custody to escape.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
129	Public servant negligently suffering prisoner of State or war in his custody to escape.	Simple imprisonment for 3 years and fine.	Ditto	Bailable.	Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Non-bailable.	Court of Session
<p style="text-align: center;">CHAPTER VII</p> <p style="text-align: center;"><i>Offences relating to the Army, Navy and Air Force</i></p>					
131	Abetting mutiny, or attempting to seduce an officer, soldier, sailor or airman from his allegiance or duty.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non-bailable.	Court of Session.

132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Death, or imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
133	Abetment of an assault by an officer, soldier, sailor or airman on his superior officer, when in the execution of his office.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
135	Abetment of the desertion of an officer, soldier, sailor or airman.	Imprisonment for 2 years, or fine, or both.	Ditto	Bailable.	Any Magistrate.
136	Harbouring such an officer, soldier, sailor, or airman who has deserted.	Ditto	Ditto	Ditto	Ditto
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Fine of 500 rupees.	Non-cognizable.	Ditto	Ditto
138	Abetment of act of insubordination by an officer, soldier, sailor or airman, if the offence be committed in consequence.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Ditto	Ditto
140	Wearing the dress or carrying any token used by a soldier, sailor or airman with intent that it may be believed that he is such a soldier, sailor or airman.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
<p style="text-align: center;">CHAPTER VIII</p> <p style="text-align: center;"><i>Offences against the public tranquillity</i></p>					
143	Being member of an unlawful assembly.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
147	Rioting.	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6
148	Rioting, armed with a deadly weapon.	Imprisonment for 3 years, or fine, or both.	Cognizable	Bailable	Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	The same as for the offence.	According as offence is cognizable or non-cognizable.	According as offence is bailable or non-bailable.	The Court by which the offence is triable
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Cognizable.	Ditto	Ditto
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Imprisonment for 6 months, or fine, or both.	Ditto	Bailable	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, etc.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed. If not committed.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Any Magistrate.
153A	Promoting enmity between classes.	Imprisonment for 6 months, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
	Promoting enmity between classes in places of worship, etc.	Imprisonment for 3 years, or fine, or both.	Ditto	Non-bailable.	Ditto
153B	Imputations, assertions prejudicial to national integration.	Imprisonment for 5 years and fine.	Ditto	Ditto	Ditto
	If committed in a place of public worship, etc.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
154	Owner or occupier of land not giving information of riot, etc.	Imprisonment for 5 years and fine	Ditto	Ditto	Ditto
		Fine of 1,000 rupees.	Non-cognizable.	Bailable.	Any Magistrate.

155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Fine.	Ditto	Ditto	Ditto
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	Ditto	Ditto	Ditto
157	Harbouring persons hired for an unlawful assembly.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Ditto	Ditto
158	Being hired to take part in an unlawful assembly or riot.	Ditto	Ditto	Ditto	Ditto
	Or to go armed.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
160	Committing affray	Imprisonment for one month, or fine of 100 rupees, or both.	Ditto	Ditto	Ditto
CHAPTER IX					
<i>Offences by or relating to public servants</i>					
161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non-bailable.	Magistrate of the first class.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
163	Taking a gratification for the exercise of personal influence with a public servant.	Simple imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Ditto
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Imprisonment for 3 years or fine, or both.	Ditto	Ditto	Ditto
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6
165A	Punishment for abetment of offence punishable under section 161 or section 165.	Imprisonment for 3 years, or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Simple imprisonment for 1 year, or fine, or both.	Non-cognizable.	Bailable.	Ditto
167	Public servant framing an incorrect document with intent to cause injury.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Ditto	Ditto
168	Public servant unlawfully engaging in trade.	Simple imprisonment for 1 year, or fine, or both.	Non-cognizable.	Ditto	Ditto
169	Public servant unlawfully buying or bidding for property.	Simple imprisonment for 2 years, or fine, or both and confiscation of property, if purchased.	Ditto	Ditto	Ditto
170	Personating a public servant.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Non-bailable.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Imprisonment for 3 months, or fine of 200 rupees, or both.	Ditto	Bailable.	Ditto
CHAPTER IXA					
<i>Offences relating to elections</i>					
171E	Bribery.	Imprisonment for 1 year, or fine, or both, or if treating only, fine only.	Non-cognizable.	Bailable.	Magistrate of the first class.
171F	Undue influence at an election.	Imprisonment for one year, or fine, or both.	Ditto	Ditto	Ditto
	Personation at an election.	Imprisonment for one year, or fine, or both.	Cognizable.	Ditto	Ditto
171G	False statement in connection with an election.	Fine.	Non-cognizable.	Ditto	Ditto

CHAPTER X

Contempts of the lawful authority of public servants

171H	Illegal payments in connection with elections.	Fine of 500 rupees.	Ditto	Ditto	Ditto
171-I	Failure to keep election account.	Ditto	Ditto	Ditto	Ditto
172	Absconding to avoid service of summons or other proceeding from a public servant. If summons or notice require attendance in person, etc., in a Court of Justice.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Non-cognizable	Bailable	Any Magistrate
173	Preventing the service or the affixing of any summons of notice, or the removal of it when it has been affixed, or preventing a proclamation. If summons, etc., require attendance in persons etc., in a Court of Justice.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority. If the order requires personal attendance, etc., in a Court of Justice.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto	Ditto	The Court in which the offence is committed, subject to the provisions of Chapter XXVI; or, if not committed in a Court, any Magistrate.
	If the document is required to be produced in or delivered to a Court of Justice.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto

1	2	3	4	5	6
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Non-cognizable	Bailable	Any Magistrate.
	If the notice or information required respects the commission of an offence, etc.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
	If the notice or information is required by an order passed under sub-section (1) of section 356 of this Code.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
177	Knowingly furnishing false information to a public servant.	Ditto	Ditto	Ditto	Ditto
	If the information required respects the commission of an offence, etc.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
178	Refusing oath when duly required to take oath by a public servant.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	The Court in which the offence is committed, subject to the provisions of Chapter XXVI; or if not committed in a Court, any Magistrate.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto	Ditto	Ditto	Ditto
180	Refusing to sign a statement made to a public servant when legally required to do so.	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
181	Knowingly stating to a public servant on oath as true that which is false.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of

		Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Any Magistrate.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.				
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto	Ditto	Ditto	Ditto
184	Obstructing sale of property offered for sale by authority of a public servant.	Imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale, or bidding without intending to perform the obligations incurred thereby.	Imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto	Ditto	Ditto
186	Obstructing public servant in discharge of his public functions.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
187	Omission to assist public servant when bound by law to give such assistance.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto	Ditto	Ditto
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Cognizable.	Ditto	Ditto
	If such disobedience causes danger to human life, health or safety, etc.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
189	Threatening a public servant with injury to him or one in whom he is interested, to induce him to do or forbear to do any official act.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Ditto	Ditto
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Ditto

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		CHAPTER XI			
		<i>False evidence and offences against public justice</i>			
193	Giving or fabricating false evidence in a judicial proceeding.	Imprisonment for 7 years and fine.	Non-cognizable.	Bailable.	Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Imprisonment for 3 years and fine.	Ditto	Ditto	Any Magistrate.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Non-Bailable.	Court of Session.
	If innocent person be thereby convicted and executed.	Death, or as above.	Ditto	Ditto	Ditto
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or with imprisonment for 7 years or upwards.	The same as for the offence.	Ditto	Ditto	Ditto
196	Using in a judicial proceeding evidence known to be false or fabricated.	The same as for giving or fabricating false evidence.	Ditto	According as offence of giving such evidence is bailable or non-bailable.	Court by which offence of giving or fabricating false evidence is triable.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto	Ditto	Bailable.	Court by which offence of giving false evidence is triable.
198	Using as a true certificate one known to be false in a material point.	Ditto	Ditto	Ditto	Ditto
199	False statement made in any declaration which is by law receivable as evidence.	Ditto	Ditto	Ditto	Ditto
200	Using as true any such declaration known to be false.	Ditto	Ditto	Ditto	Ditto

		Imprisonment for 7 years and fine.	According as the offence in relation to which disappearance is caused is cognizable or non-cognizable.	Ditto	Court of Session.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.				
	If punishable with imprisonment for life or imprisonment for 10 years.	Imprisonment for 3 years and fine.	Non-cognizable.	Ditto	Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Imprisonment for a quarter of the longest term provided for the offence, or fine, or both.	Ditto	Ditto	Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Imprisonment for 6 months, or fine, or both.	Ditto	Ditto	Any Magistrate.
203	Giving false information respecting an offence committed.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
204	Secreting or destroying any document to prevent its production as evidence.	Ditto	Ditto	Ditto	Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
206	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence or in execution of a decree.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	Ditto	Ditto	Ditto

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208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable.	Magistrate of the first class.
209	False claim in a Court of Justice	Imprisonment for 2 years and fine.	Ditto	Ditto	Ditto
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
211	False charge of offence made with intent to injure.	Ditto	Ditto	Ditto	Ditto
	If offences charged be punishable with imprisonment for 7 years or upwards.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
	If offence charged be capital or punishable with imprisonment for life.	Ditto	Ditto	Ditto	Court of Session.
212	Harbouring an offender, if the offence be capital.	Imprisonment for 5 years and fine.	Cognizable	Ditto	Magistrate of the first class.
	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years and fine.	Ditto	Ditto	Ditto
	If punishable with imprisonment for 1 year and not for 10 years.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto	Ditto	Ditto
213	Taking gift, etc., to screen an offender from punishment if the offence be capital.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years.	Ditto	Ditto	Ditto
	If punishable with imprisonment for less than 10 years.	Imprisonment for a quarter of the longest term provided for the offence, or fine, or both.	Ditto	Ditto	Ditto

		Imprisonment for 7 years and fine.	Non-cognizable.	Ditto	Ditto.
214	Offering gift or restoration of property in consideration of screening offender if the offence be capital.				
	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years and fine.	Ditto	Ditto	Ditto
	If punishable with imprisonment for less than 10 years.	Imprisonment for a quarter of the longest term, provided for the offence, or fine, or both.	Ditto	Ditto	Ditto
215	Taking gift to help to recover movable property by which a person has been deprived of an offence without causing apprehension of offender.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Ditto	Ditto
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years with or without fine.	Ditto	Ditto	Ditto
	If punishable with imprisonment for 1 year and not for 10 years.	Imprisonment for a quarter of the longest term provided for the offence, or fine, or both.	Ditto	Ditto	Ditto
216A	Harbouring robbers or dacoits	Rigorous imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Ditto	Any Magistrate.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Ditto	Magistrate of the first class.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Imprisonment for 7 years, or fine, or both.	Non-cognizable.	Ditto	Ditto

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		Imprisonment for 7 years, or fine, or both.	Non-cognizable	Bailable	Magistrate of the first class
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.				
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Imprisonment for 7 years with or without fine.	According as the offence in relation to which such omission has been made is cognizable or non-cognizable.	Ditto	Ditto
	If punishable with imprisonment for life or imprisonment for 10 years.	Imprisonment for 3 years, with or without fine.	Cognizable.	Ditto	Ditto
	If punishable with imprisonment for less than 10 years.	Imprisonment for 2 years, with or without fine.	Ditto	Ditto	Ditto
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice if under sentence of death.	Imprisonment for life, or imprisonment for 14 years, with or without fine.	Ditto	Non-bailable.	Court of Session.
	If under sentence of imprisonment for life or imprisonment for 10 years, or upwards.	Imprisonment for 7 years, with or without fine.	Ditto	Ditto	Magistrate of the first class.
	If under sentence of imprisonment for less than 10 years or lawfully committed to custody.	Imprisonment for 3 years, or fine, or both.	Ditto	Bailable	Ditto
223	Escape from confinement negligently suffered by a public servant.	Simple imprisonment for 2 years, or fine, or both.	Non-cognizable.	Ditto	Any Magistrate.
224	Resistance or obstruction by a person to his lawful apprehension.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Ditto	Ditto
225	Resistance or obstruction to the lawful apprehension of any person, or rescuing him from lawful custody.	Ditto	Ditto	Ditto	Ditto

		Imprisonment for 3 years and fine.	Ditto	Non-bailable.	Magistrate of the first class.
	If charged with an offence punishable with imprisonment for life or imprisonment for 10 years.				
	If charged with a capital offence.				
	If the person is sentenced to imprisonment for life, or imprisonment for 10 years, or upwards.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
	If under sentence of death.	Ditto	Ditto	Ditto	Ditto
		Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
225A	Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for :—				
	(a) in case of intentional omission or sufferance;	Imprisonment for 3 years, or fine, or both.	Non-cognizable.	Bailable.	Magistrate of the first class.
	(b) in case of negligent omission or sufferance.	Simple imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
225B	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Ditto	Ditto
227	Violation of condition of remission of punishment.	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	Ditto	Non-bailable.	The Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Non-cognizable.	Bailable.	The Court in which the offence is committed subject to the provisions of Chapter XXVI.
229	Personation of a juror or assessor.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.

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CHAPTER XII					
<i>Offences relating to coin and government stamps</i>					
231	Counterfeiting, or performing any part of the process of counterfeiting coin.	Imprisonment for 7 years and fine.	Cognizable.	Non-bailable.	Magistrate of the first class.
232	Counterfeiting, or performing any part of the process of counterfeiting Indian coin.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting Indian coin.	Imprisonment for 7 years and fine.	Ditto	Ditto	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
	If Indian coin.	Imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
236	Abetting, in India, the counterfeiting, out of India, of coin.	The punishment provided for abetting the counterfeiting of such coin within India.	Ditto	Ditto	Ditto
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
238	Import or export of counterfeit of Indian coin, knowing the same to be counterfeit.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, etc., the same to any person.	Imprisonment for 5 years and fine.	Ditto	Ditto	Magistrate of the first class.
240	Same with respect to Indian coin.	Imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.

		Imprisonment for 2 years, or fine, or 10 times the value of the coin counterfeited, or both.]	Ditto	Ditto	Any Magistrate.
241	Knowingly delivering to another any counterfeit coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.				
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class.
243	Possession of Indian coin by a person who knew it to be counterfeit when he became possessed thereof.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto	Ditto	Ditto	Ditto
245	Unlawfully taking from a Mint any coining instrument.	Ditto	Ditto	Ditto	Ditto
246	Fraudulently diminishing the weight or altering the composition of any coin.	Imprisonment for 3 years and fine.	Ditto	Ditto	Ditto
247	Fraudulently diminishing the weight or altering the composition of Indian coin.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Imprisonment for 3 years and fine.	Ditto	Ditto	Ditto
249	Altering appearance of Indian coin with intent that it shall pass as a coin of a different description.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
250	Delivery to another of coin possessed with the knowledge that it is altered.	Imprisonment for 5 years and fine.	Ditto	Ditto	Ditto
251	Delivery of Indian coin possessed with the knowledge that it is altered.	Imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.

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		Imprisonment for 3 years and fine.	Cognizable	Non-bailable	Magistrate of the first class.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.				
253	Possession of Indian coin by a person who knew it to be altered when he became possessed thereof.	Imprisonment for 5 years and fine.	Ditto	Ditto	Ditto
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Imprisonment for 2 years, or fine, or 10 times the value of the coin.	Ditto	Ditto	Any Magistrate.
255	Counterfeiting a Government stamp.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Imprisonment for 7 years and fine.	Ditto	Ditto	Magistrate of the first class.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto	Ditto	Ditto	Ditto
258	Sale of counterfeit Government stamp.	Ditto	Ditto	Ditto	Ditto
259	Having possession of a counterfeit Government stamp.	Ditto	Ditto	Bailable	Ditto
260	Using as genuine a Government stamp known to be counterfeit.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Ditto
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it, with intent to cause a loss to Government.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
262	Using a Government stamp known to have been before used.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
263	Eraseure of mark denoting that stamps have been used.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
263 A	Fictitious stamps.	Fine of 200 rupees.	Ditto	Ditto	Any Magistrate.

CHAPTER XIII

Offences relating to weights and measures

	Fraudulent use of false instrument for weighing.	Imprisonment for 1 year, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
264					
265	Fraudulent use of false weight or measure.	Ditto	Ditto	Ditto	Ditto
266	Being in possession of false weights or measures for fraudulent use.	Ditto	Ditto	Ditto	Ditto
267	Making or selling false weights or measures for fraudulent use.	Ditto	Cognizable.	Non-bailable.	Ditto

CHAPTER XIV

Offences affecting the public health, safety, convenience, decency and morals

	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
269					
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
271	Knowingly disobeying any quarantine rule.	Imprisonment for 6 months, or fine, or both.	Non-cognizable.	Ditto	Ditto
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
273	Selling any food or drink as food and drink, knowing the same to be noxious.	Ditto	Ditto	Ditto	Ditto
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto	Ditto	Ditto	Ditto

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275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Imprisonment for six months, or fine of 1,000 rupees, or both.	Non-cognizable	Bailable	Any Magistrate
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto	Ditto	Ditto	Ditto
277	Defiling the water of a public spring or reservoir.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Cognizable.	Ditto	Ditto
278	Making atmosphere noxious to health.	Fine of 500 rupees.	Non-cognizable.	Ditto	Ditto
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Cognizable.	Ditto	Ditto
280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	Ditto	Ditto	Ditto	Ditto
281	Exhibition of a false light, mark or buoy.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Any Magistrate.
283	Causing danger, obstruction or, injury in any public way or line of navigation.	Fine of 200 rupees.	Ditto	Ditto	Ditto
284	Dealing with any poisonous substance so as to endanger human life, etc.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
285	Dealing with fire or any combustible matter so as to endanger human life, etc.	Ditto	Ditto	Ditto	Ditto
286	So dealing with any explosive substance.	Ditto	Ditto	Ditto	Ditto

287	So dealing with any machinery.	Ditto	Non-cognizable	Ditto	Ditto
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto	Ditto	Ditto	Ditto
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	Ditto	Cognizable.	Ditto	Ditto
290	Committing a public nuisance.	Fine of 200 rupees.	Non-cognizable.	Ditto	Ditto
291	Continuance of nuisance after injunction to discontinue.	Simple imprisonment for 6 months, or fine, or both.	Cognizable.	Ditto	Ditto
292	Sale, etc., of obscene books, etc.	On first conviction, with imprisonment for 2 years, and with fine of 2,000 rupees, and, in the event of second or subsequent conviction, with imprisonment for five years and with fine of 5,000 rupees.	Ditto	Ditto	Ditto
293	Sale, etc., of obscene objects to young persons.	On first conviction, with imprisonment for 3 years, and with fine of 2,000 rupees, and in the event of second or subsequent conviction, with imprisonment for seven years, and with fine of 5,000 rupees.	Ditto	Ditto	Ditto
294	Obscene songs.	Imprisonment for 3 months, or fine, or both.	Ditto	Ditto	Ditto
294A	Keeping a lottery office.	Imprisonment for 6 months, or fine, or both.	Non-cognizable.	Ditto	Ditto
	Publishing proposals relating to lotteries.	Fine of 1,000 rupees.	Ditto	Ditto	Ditto
CHAPTER XV					
<i>Offences relating to religion</i>					
295	Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	Imprisonment for 2 years or fine, or both.	Cognizable.	Non-bailable.	Any Magistrate.

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	Maliciously insulting the religion or the religious beliefs of any class.	Imprisonment for 2 years or fine, or both.	Cognizable	Non-bailable	Magistrate of the first class.
295A					
296	Causing a disturbance to an assembly engaged in religious worship.	Imprisonment for 1 year, or fine, or both.	Ditto	Bailable.	Any Magistrate.
297	Trespassing in place of worship or sepulchre, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to human corpse.	Ditto	Ditto	Ditto	Ditto
298	Uttering any word or making any sound in the hearing or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Ditto	Non-cognizable.	Ditt	Ditto
<p style="text-align: center;">CHAPTER XVI <i>Offences affecting the human body</i></p>					
302	Murder.	Death, or imprisonment for life, and fine.	Cognizable.	Non-bailable.	Court of Session.
303	Murder by a person under sentence of imprisonment for life.	Death.	Ditto	Ditto	Ditto
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Imprisonment for 10 years, or fine, or both.	Ditto	Ditto	Ditto
304A	Causing death by rash or negligent act.	Imprisonment for 2 years, or fine, or both.	Ditto	Bailable.	Magistrate of the first class.
305	Abetment of suicide committed by child, or insane or delirious person or an idiot, or a person intoxicated.	Death, or imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Non-bailable.	Court of Session.

306	Abetting the commission of suicide.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
307	Attempt to murder.	Ditto	Ditto	Ditto	Ditto
	If such act causes hurt to any person.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
	Attempt by life-convict to murder, if hurt is caused.	Death or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
308	Attempt to commit culpable homicide.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
	If such act causes hurt to any person.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Ditto
309	Attempt to commit suicide.	Simple imprisonment for 1 year, or fine, or both.	Ditto	Bailable.	Any Magistrate.
311	Being a thug.	Imprisonment for life, and fine.	Ditto	Non-bailable.	Court of Session.
312	Causing miscarriage.	Imprisonment for 3 years, or fine, or both.	Non-cognizable.	Bailable.	Magistrate of the first class.
	If the woman be quick with child.	Imprisonment for 7 years, and fine.	Ditto	Ditto	Ditto
313	Causing miscarriage without woman's consent.	Imprisonment for life, or imprisonment for 10 years, and fine.	Cognizable.	Non-bailable.	Court of Session.
314	Death caused by an act done with intent to cause miscarriage.	Imprisonment for 10 years, and fine.	Ditto	Ditto	Ditto
	If act done without woman's consent.	Imprisonment for life, or as above.	Ditto	Ditto	Ditto
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Imprisonment for 10 years, or fine, or both.	Ditto	Ditto	Ditto
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto

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317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	Imprisonment for 7 years, or fine, or both.	Cognizable	Bailable.	Magistrate of the first class.
318	Concealment of birth by secret disposal of dead body.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
323	Voluntarily causing hurt.	Imprisonment for 1 year, or fine of 1,000 rupees, or both.	Non-cognizable.	Ditto	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Ditto	Ditto
325	Voluntarily causing grievous hurt.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Non-bailable.	Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
328	Administering stupefying drug with intent to cause hurt, etc.	Ditto.	Ditto	Ditto	Court of Session.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
330	Voluntarily causing hurt to extort confession or information or to compel restoration of property, etc.	Imprisonment for 7 years and fine.	Ditto	Bailable.	Magistrate of the first class.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc.	Imprisonment for 10 years and fine.	Ditto	Non-bailable.	Court of Session.

332	Voluntarily causing hurt to deter public servant from his duty.	Imprisonment for 3 years, or fine, or both.	Ditto	Bailable.	Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Imprisonment for 10 years and fine.	Ditto	Non-bailable.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 1 month, or fine of 500 rupees, or both.	Non-cognizable.	Bailable.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 4 years, or fine of 2,000 rupees, or both.	Cognizable.	Ditto	Magistrate of the first class.
336	Doing any act which endangers human life or the personal safety of others.	Imprisonment for 3 months, or fine of 250 rupees, or both.	Ditto	Ditto	Any Magistrate.
337	Causing hurt by an act which endangers human life, etc.	Imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
338	Causing grievous hurt by an act which endangers human life, etc.	Imprisonment for 2 years, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
341	Wrongfully restraining any person.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Ditto	Ditto	Ditto
342	Wrongfully confining any person.	Imprisonment for 1 year, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
343	Wrongfully confining for three or more days.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
344	Wrongfully confining for 10 or more days.	Imprisonment for 3 years and fine.	Ditto	Ditto	Ditto
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Imprisonment for 2 years, in addition to imprisonment under any other section.	Ditto	Ditto	Magistrate of the first class.
346	Wrongful confinement in secret.	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6
		Imprisonment for 3 years and fine.	Cognizable	Bailable	Any Magistrate.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, etc.				
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, etc.	Ditto	Ditto	Ditto	Ditto
352	Assault or use of criminal force otherwise than on grave provocation.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Non-cognizable.	Ditto	Ditto
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Ditto	Ditto
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto	Ditto	Ditto	Ditto
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Ditto	Non-cognizable.	Ditto	Ditto
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	Ditto	Cognizable.	Ditto	Ditto
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Imprisonment for 1 year, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
358	Assault or use of criminal force on grave and sudden provocation.	Simple imprisonment for one month, or fine of 200 rupees, or both.	Non-cognizable.	Ditto	Ditto
363	Kidnapping.	Imprisonment for 7 years, and fine.	Cognizable	Ditto	Magistrate of the first class.
363A	Kidnapping or obtaining the custody of a minor, in order that such minor may be employed or used for purposes of begging.	Imprisonment for 10 years, and fine.	Ditto	Non-bailable	Ditto

	Maiming a minor in order that such minor may be employed or used for purposes of begging.	Imprisonment for life and fine.	Ditto	Ditto	Court of Session
364	Kidnapping or abducting in order to murder.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Imprisonment for 7 years and fine.	Ditto	Ditto	Magistrate of the first class.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc.	Imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
366A	Procuration of minor girl.	Ditto	Ditto	Ditto	Ditto
366B	Importation of girl from foreign country.	Ditto	Ditto	Ditto	Ditto
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	Ditto	Ditto	Ditto	Ditto
368	Concealing or keeping in confinement a kidnapped person.	Punishment for kidnapping or abduction.	Ditto	Ditto	Court by which the kidnapping or abduction is triable.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Imprisonment for 7 years and fine.	Ditto	Ditto	Magistrate of the first class.
370	Buying or disposing of any person as a slave.	Ditto	Non-cognizable.	Bailable.	Ditto
371	Habitual dealing in slaves.	Imprisonment for life, or imprisonment for 10 years, and fine.	Cognizable.	Non-bailable.	Court of Session
372	Selling or letting to hire a minor for purposes of prostitution, etc.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
373	Buying or obtaining possession of a minor for the same purposes.	Ditto	Ditto	Ditto	Ditto

1	2	3	4	5	6
374	Unlawful compulsory labour.	Imprisonment for 1 year, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
376	Rape. If the sexual intercourse was by a man with his own wife not being under 12 years of age.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Ditto	Court of Session
	If the sexual intercourse was by a man with his own wife being under 12 years of age.	Imprisonment for life, or imprisonment for 10 years, and fine.	Ditto	Ditto	Ditto
	In any other case.	Ditto	Cognizable	Non-bailable.	Ditto
377	Unnatural offences.	Ditto	Ditto	Ditto	Magistrate of the first class.
CHAPTER XVII					
<i>Offences against property</i>					
379	Theft	Imprisonment for 3 years, or fine, or both.	Cognizable	Non-bailable.	Any Magistrate.
380	Theft in a building, tent or vessel.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
381	Theft by clerk or servant of property in possession of master or employer.	Ditto	Ditto	Ditto	Ditto
382	Theft, after preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such theft, or to retreating after committing it, or to retaining property taken by it.	Rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Magistrate of the first class.
384	Extortion.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Imprisonment for 2 years, or fine, or both.	Ditto	Bailable.	Ditto

		Imprisonment for 10 years and fine.	Ditto	Non-bailable.	Magistrate of the first class.
386	Extortion by putting a person in fear of death or grievous hurt.		Ditto		
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
388	Extortion by threat or accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years.	Imprisonment for 10 years and fine.	Ditto	Bailable.	Ditto
	If the offence threatened be an unnatural offence.	Imprisonment for life.	Ditto	Ditto	Ditto
389	Putting a person in fear of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years in order to commit extortion.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
392	If the offence be an unnatural offence. Robbery.	Imprisonment for life.	Ditto	Ditto	Ditto
		Rigorous imprisonment for 10 years and fine.	Ditto	Non-bailable.	Ditto
393	If committed on the highway between sunset and sunrise. Attempt to commit robbery.	Rigorous imprisonment for 14 years and fine.	Ditto	Ditto	Ditto
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Rigorous imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
395	Dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
396	Murder in dacoity.	Ditto	Ditto	Ditto	Court of Session.
		Death, imprisonment for life, or rigorous imprisonment for 10 years, and fine.	Ditto	Ditto	Ditto

1	2	3	4	5	6
			Cognizable	Non-bailable	Court of Session.
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Rigorous imprisonment for not less than 7 years.			
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto	Ditto	Ditto	Ditto
399	Making preparation to commit dacoity.	Rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Rigorous imprisonment for 7 years and fine.	Ditto	Ditto	Magistrate of the first class.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto	Ditto	Ditto	Court of Session
403	Dishonest misappropriation of movable property, or converting it to one's own use.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Imprisonment for 3 years and fine.	Ditto	Ditto	Magistrate of the first class
	If by clerk or person employed by deceased.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
406	Criminal breach of trust.	Imprisonment for 3 years or fine, or both.	Cognizable.	Non-bailable.	Ditto
407	Criminal breach of trust by a carrier, wharfinger, etc.	Imprisonment for 7 years and fine.	Ditto	Ditto	Ditto
408	Criminal breach of trust by a clerk or servant.	Ditto	Ditto	Ditto	Ditto

409	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
411	Dishonestly receiving stolen property knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
412	Dishonestly receiving stolen property knowing that it was obtained by dacoity	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
413	Habitually dealing in stolen property.	Imprisonment for life, or imprisonment for 10 years, and fine.	Ditto	Ditto	Ditto
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
417	Cheating.	Imprisonment for 1 year, or fine, or both.	Non-cognizable.	Bailable.	Ditto
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
419	Cheating by personation.	Ditto.	Cognizable.	Ditto	Ditto
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Imprisonment for 7 years and fine.	Ditto	Non-bailable.	Magistrate of the first class.
421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto	Ditto	Ditto	Ditto
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto	Ditto	Ditto	Ditto

1	3	4	5	6
	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
424	Fraudulent removal or concealment of property, of himself or any other person or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.			
426	Mischief.	Imprisonment for 3 months, or fine, or both.	Ditto	Ditto
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	Ditto	Ditto	Ditto
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Cognizable.	Ditto	Ditto
430	Mischief by causing diminution of supply of water for agricultural purposes, etc.	Imprisonment for 5 years, or fine, or both.	Ditto	Magistrate of the first class.
431	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Ditto	Ditto	Ditto
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto	Ditto	Ditto
433	Mischief by destroying or moving or rendering less useful a lighthouse or sea-mark, or by exhibiting false lights.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto
434	Mischief by destroying or moving, etc., a landmark fixed by public authority.	Imprisonment for 1 year, or fine, or both.	Non-cognizable. Ditto	Any Magistrate.

		Imprisonment for 7 years and fine.	Cognizable.	Ditto	Magistrate of the first class.
435	Mischief by fire or explosive substance with intent to cause damage to an amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.			Ditto	
436	Mischief by fire or explosive substance with intent to destroy a house, etc.	Imprisonment for life, or imprisonment for 10 years, and fine.	Ditto	Non-bailable.	Court of Session.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tonnes burden.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
438	The mischief described in the last section when committed by fire or any exclusive substance.	Imprisonment for life, or imprisonment for ten years, and fine.	Ditto	Ditto	Ditto
439	Running vessel ashore with intent to commit theft, etc.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
440	Mischief committed after preparation made for causing death, or hurt, etc.	Imprisonment for 5 years and fine.	Ditto	Bailable.	Magistrate of the first class.
447	Criminal trespass.	Imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto	Ditto	Any Magistrate.
448	House-trespass.	Imprisonment for one year, or fine of 1,000 rupees, or both.	Ditto	Ditto	Ditto
449	House-trespass in order to the commission of an offence punishable with death.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto	Non-bailable	Court of Session.
450	House-trespass in order to the commission of an offence punishable with imprisonment for life.	Imprisonment for 10 years and fine.	Ditto	Ditto	Ditto
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Imprisonment for 2 years and fine.	Ditto	Bailable.	Any Magistrate.
	If the offence is theft.	Imprisonment for 7 years and fine.	Ditto	Non-bailable.	Ditto

1	2	3	4	5	6
452	House-trespass, having made preparation for causing hurt, assault, etc.	Imprisonment for 7 years and fine.	Cognizable.	Non-bailable	Any Magistrate.
453	Lurking house-trespass or house-breaking	Imprisonment for 2 years and fine.	Ditto	Ditto	Ditto
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Imprisonment for 3 years and fine.	Ditto	Ditto	Ditto
	If the offence be theft.	Imprisonment for 10 years and fine.	Ditto	Ditto	Magistrate of the first class.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	Ditto	Ditto	Ditto	Ditto
456	Lurking house-trespass or house-breaking by night	Imprisonment for 3 years and fine.	Ditto	Ditto	Any Magistrate.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Imprisonment for 5 years and fine.	Ditto	Ditto	Magistrate of the first class.
	If the offence is theft.	Imprisonment for 14 years and fine.	Ditto	Ditto	Ditto
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, etc.	Imprisonment for 14 years and fine.	Ditto	Ditto	Ditto
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto	Ditto	Ditto

461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Imprisonment for 2 years, or fine, or both.	Ditto	Any Magistrate.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Imprisonment for 3 years, or fine, or both.	Bailable.	Ditto
<p style="text-align: center;">CHAPTER XVIII</p> <p style="text-align: center;"><i>Offences relating to documents and to property marks</i></p>				
465	Forgery.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Magistrate of the first class.
466	Forgery of a record of a Court of Justice or of a Registrar of Births, etc., kept by a public servant.	Imprisonment for 7 years, and fine.	Ditto	Ditto
467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, etc.	Imprisonment for life, or imprisonment for 10 years, and fine.	Ditto	Ditto
	When the valuable security is a promissory note of the Central Government.	Ditto	Cognizable.	Ditto
468	Forgery for the purpose of cheating.	Imprisonment for 7 years and fine.	Ditto	Ditto
469	Forgery for the purpose of harming the reputation of any person or knowing that it is likely to be used for that purpose.	Imprisonment for 3 years and fine.	Bailable.	Ditto
471	Using as genuine a forged document which is known to be forged.	Punishment for forgery of such document.	Ditto	Ditto
	When the forged document is a promissory note of the Central Government.	Ditto	Ditto	Ditto
472	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Imprisonment for life, or imprisonment for 7 years, and fine.	Ditto	Ditto

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473	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeited.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
474	Having possession of a document, knowing it to be forged, with intent to use it as a genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto	Ditto	Ditto	Ditto
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Imprisonment for life, or imprisonment for 7 years, and fine.	Non-cognizable.	Ditto	Ditto
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto	Ditto	Ditto
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code or possessing counterfeit marked material.	Imprisonment for 7 years, and fine.	Ditto	Non-bailable.	Ditto
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc.	Imprisonment for life, or imprisonment for 7 years, and fine.	Ditto	Ditto	Ditto
477A	Falsification of accounts.	Imprisonment for 7 years, or fine, or both.	Ditto	Bailable.	Ditto
482	Using a false property mark with intent to deceive or injure any person.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Any Magistrate.

483	Counterfeiting a property mark used by another, with intent to cause damage or injury.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
484	Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	Imprisonment for 3 years, and fine.	Ditto	Ditto	Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property mark.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
486	Knowingly selling goods marked with a counterfeit property mark.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Any Magistrate.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, etc.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto	Ditto
488	Making use of any such false mark.	Ditto	Ditto	Ditto	Ditto
489	Removing, destroying or defacing property mark with intent to cause injury.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Ditto
489A	Counterfeiting currency-notes or bank-notes.	Imprisonment for life, or imprisonment for 10 years, and fine.	Cognizable.	Non-bailable	Court of Session.
489B	Using as genuine forged or counterfeit currency-notes or bank-notes.	Ditto	Ditto	Ditto	Ditto
489C	Possession of forged or counterfeit currency-notes or bank-notes.	Imprisonment for 7 years, or fine, or both.	Ditto	Bailable.	Ditto
489D	Making or possessing machinery, instrument or material for forging or counterfeiting currency-notes or bank-notes.	Imprisonment for life, or imprisonment for 10 years, and fine.	Ditto	Non-bailable.	Ditto
489E	Making or using documents resembling currency-notes or bank-notes. On refusal to disclose the name and address of the printer.	Fine of 100 rupees. Fine of 200 rupees.	Non-cognizable	Bailable.	Any Magistrate.
			Ditto	Ditto	Ditto

1	2	3	4	5	6
CHAPTER XIX					
<i>Criminal breach of contract of service</i>					
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Imprisonment for 3 months, or fine of 200 rupees, or both.	Non-cognizable.	Bailable.	Any Magistrate.
CHAPTER XX					
<i>Offences relating to marriage</i>					
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Imprisonment for 10 years, and fine.	Non-cognizable.	Non-bailable.	Magistrate of the first class.
494	Marrying again during the lifetime of a husband or wife.	Imprisonment for 7 years, and fine.	Ditto	Bailable.	Ditto
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Imprisonment for 10 years, and fine.	Ditto	Ditto	Ditto
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not there- by lawfully married.	Imprisonment for 7 years, and fine.	Ditto	Ditto	Ditto
497	Adultery.	Imprisonment for 5 years, or fine, or both.	Ditto	Ditto	Ditto
498	Enticing or taking away or detaining with a criminal intent a married woman.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
CHAPTER XXI					
<i>Defamation</i>					
500	Defamation against the President or the Vice-President or the Governor of a	Simple Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.	Court of Session.

State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.

Defamation in any other case.

Ditto	Ditto	Ditto	Magistrate of the first class.
Ditto	Ditto	Ditto	Court of Session.

501(a) Printing or engraving matter knowing it to be defamatory against the President or the Vice-President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by Public Prosecutor.

(b) Printing or engraving matter knowing it to be defamatory, in any other case.

Ditto	Ditto	Ditto	Magistrate of the first class.
Ditto	Ditto	Ditto	Court of Session.

502(a) Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the President or the Vice-President of the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.

(b) Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter in any other case.

Ditto	Ditto	Ditto	Magistrate of the first class.
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CHAPTER XXII

Criminal intimidation, insult and annoyance

504 Insult intended to provoke breach of the peace.

Any Magistrate.

505 False statement, rumour, etc., circulated with intent to cause mutiny or offence against the public peace.

Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.
Imprisonment for 3 years, or fine, or both.	Ditto	Non-bailable.

Ditto

1	2	3	4	5	6
	False statement, rumour, etc., with intent to create enmity, hatred or ill-will between different classes.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non-bailable.	Any Magistrate.
	False statement, rumour etc., made in place of worship, etc., with intent to create enmity, hatred or ill-will.	Imprisonment for 5 years and fine.	Ditto	Ditto	Ditto
506	Criminal intimidation.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.	Ditto
	If threat be to cause death or grievous hurt, etc.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Imprisonment for 2 years, in addition to the punishment under above section.	Ditto	Ditto	Ditto
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Any Magistrate.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Simple imprisonment for 1 year, or fine, or both.	Cognizable.	Ditto	Ditto
510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Non-cognizable.	Ditto	Ditto
CHAPTER XXIII					
<i>Attempts to commit offences</i>					
511	Attempting to commit offences punishable with imprisonment for life or imprisonment, and in such attempt doing any act towards the commission of the offence.	Imprisonment for life or imprisonment not exceeding half of the longest term provided for the offence, or fine, or both.	According as the offence is cognizable or non-cognizable.	According as the offence is attempted by the offender is bailable or not.	The court by which the offence is attempted is triable.

II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

CLASSIFICATION OF OFFENCES

401

<i>Offence</i>	<i>Cognizable or non-cognizable</i>	<i>Bailable or non-bailable</i>	<i>By what Court triable</i>
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable.	Non-bailable.	Court of Session.
If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Ditto	Ditto	Magistrate of the first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable.	Bailable	Any Magistrate.

NOTES

This corresponds to Schedule II of the old Code, Column 4 of the old Schedule II has been omitted in view of the provision that summonses will issue in all summons-cases and warrants in all warrant-cases.

Column 6 of the old Schedule II has also been omitted because section 203 (new) itself makes the necessary provision in this regard.

Columns 4 and 5 of the Schedule indicate respectively cognizable or non-cognizable and bailable or non-bailable. The following changes have been made in regard to classification of offences :

- (1) Offences under sections 121 to 130 IPC are made cognizable.
- (2) Offence under section 129 IPC is made bailable.
- (3) Offence under section 153A IPC is made cognizable.
- (4) Reference to (new) offence under section 153B IPC has been inserted in the Schedule.
- (5) Offence under section 160 IPC is made cognizable.
- (6) Offences under sections 161, 162, 163, 164, 165 and 165A IPC are made non-bailable.
- (7) Offence under section 167 IPC is made cognizable.
- (8) Offence under section 170 IPC is made non-bailable.
- (9) Offence under section 201 IPC is made cognizable or non-cognizable, as the case may be.
- (10) Offence under section 218 IPC is made cognizable.
- (11) Offences under sections 221 and 222 IPC are made cognizable or non-cognizable, as the case may be.
- (12) Offence under section 227 IPC is made cognizable.
- (13) Offences under sections 255, 256, 257 and 258 IPC are made non-bailable.
- (14) Offence under section 267 IPC is made cognizable and non-bailable.
- (15) Offence under section 271 IPC is made cognizable.
- (16) Offence under section 284 IPC is made cognizable.
- (17) Offence under section 295 IPC is made non-bailable.
- (18) Offence under section 295A IPC is made cognizable.
- (19) Offence under section 304A IPC is made bailable.
- (20) Offence under section 309 IPC is made bailable.
- (21) Offences under sections 313, 314 and 315 IPC are made cognizable.
- (22) Offence under section 316 IPC is made cognizable.
- (23) Offence under section 345 IPC is made cognizable.
- (24) Offence under section 356 IPC is made bailable.
- (25) Offence under section 384 IPC is made cognizable and non-bailable.
- (26) Offences under sections 385-389 are made cognizable.
- (27) Offence under section 420 IPC is made non-bailable.
- (28) Offence under section 421 IPC is made bailable.
- (29) Offence under section 440 IPC is made bailable.
- (30) Offence under section 468 IPC is made cognizable.
- (31) Offence under section 472 IPC is made cognizable.
- (32) Offence under section 509 IPC is made cognizable.

In the last column of the Schedule a simplification has been made. In the old Schedule II, the last column mentioned the Court of Session in addition to other Magistrate's Courts. As under the new Code [section 26] Courts of Session can try any offence, it was considered unnecessary to mention the Court of Session also when the offence can be tried by a Magistrate. In the new Schedule I a Court of Session is mentioned only when the offence is one which should be tried exclusively by that Court. Accordingly changes have been made in the last column against the following sections of the IIC mentioned in the first column :

120B, 124A, 161 to 169, 193, 196 to 200, 201, 212 to 216, 246 to 263, 263A, 292 and 293, 295, 295A, 317 and 318, 335, 345 and 346, 363A, 368, 372 and 373, 376, 377, 386 to 389, 406 and 408, 429 and 432, 454, 457, 465 to 477A, 505 and 509.

The latter part of the Schedule deals with offences under other laws. They have now been put in three groups *instead* of four previously. Offences in the last group will now be triable by any Magistrate *instead* of the Court of Session as previously.

THE SECOND SCHEDULE

[See section 476]

FORM NO. 1**SUMMONS TO AN ACCUSED PERSON**

[See section 61]

To (name of accused) of (address)

Whereas your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or by pleader, as the case may be*) before the (*Magistrate*) of....., on the.....day of.....
Herein fail not.

Dated, this.....day of....., 19.....

(Seal of the Court)

(Signature)

FORM NO. 2**WARRANT OF ARREST**

[See section 70]

To (name and designation of the person or persons who is or are to execute the warrant).

Whereas (name of accused) of (address) stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said....., and to produce him before me. Herein fail not.

Dated, this..... day of....., 19.....

(Seal of the Court)

(Signature)

[See section 71]

This warrant may be endorsed as follows :—

If the said.....shall give bail himself in the sum of rupeeswith one surety in the sum of rupees.....(*or two sureties each in the sum of rupees.....*) to attend before me on the.....day of.....and to continue so to attend until otherwise directed by me, he may be released.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 3**BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT**

[See section 81]

I, (name), of....., being brought before the District Magistrate of..... (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of....., do hereby bind myself to attend in the Court of.....on the.....day of.....next, to answer to the said charge, and to continue so to attend until otherwise directed by the Court ; and, in case of

my making default herein, I bind myself to forfeit, to Government, the sum of rupees.....

Dated, this.....day of....., 19.....

(Signature)

I do hereby declare myself surety for the above-named.....of..... that he shall attend before.....in the Court of.....on the..... day of.....next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court ; and, in case of his making default therein, I bind myself to forfeit, to Government, the sum of rupees.....

Dated, this.....day of.....19...

(Signature)

FORM NO. 4

PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED

[See section 82]

Whereas complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of....., punishable under section.....of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found, and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*) ;

Proclamation is hereby made that the said.....of.....is required to appear at (*place*) before this Court (*or before me*) to answer the said complaint on theday of.....19.....

Dated, this.....day of....., 19.....

(Seal of the Court)

(Signature)

FORM NO. 5

PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS

[See sections 82, 87 and 90]

Whereas complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint ; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*) ;

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of.....on the.....day of..... next at.....o'clock, to be examined touching.....the offence complained of.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 6**ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A
WITNESS**

[See section 83]

To the Police Officer in charge of the police station at.....

Whereas a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served ; and whereas it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*) ; and thereupon a Proclamation has been or is being duly issued and published requiring the said.....to appear and give evidence at the time and place mentioned therein ;

This is to authorise and require you to attach by seizure the movable property belonging to the said.....to the value of rupees.....which you may find within the District of.....and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 7**ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON
ACCUSED**

[See section 83]

To (*name and designation of the person or persons who is or are to execute the warrant*).

Whereas complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of.....punishable under section.....of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*) and thereupon a Proclamation has been or is being duly issued and published requiring the said.....to appear to answer the said charge withindays ; and whereas the said.....is possessed of the following property, other than land paying revenue to Government, in the village (*or town*), of....., in the District of....., viz....., and an order has been made for the attachment thereof ;

You are hereby required to attach the said property in the manner specified in clause (*a*). or clause (*c*). or both*, of sub-section (2) of section 83, and to hold the same under attachment pending further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

*Strike out the one which is not applicable, depending on the nature of the property to be attached.

FORM NO. 8**ORDER AUTHORISING AN ATTACHMENT BY THE DISTRICT MAGISTRATE
OR COLLECTOR**

[See section 83]

To the District Magistrate/Collector of the District of.....

Whereas complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of.....
, punishable under section.....of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*) and thereupon a Proclamation has been or is being duly issued and published requiring the said (*name*) to appear to answer the said charge within.....days ; and whereas the said.....is possessed of certain land paying revenue to Government in the village (*or town*) of.....
in the District of.....;

You are hereby authorised and requested to cause the said land to be attached, in the manner specified in clause (*a*), or clause (*c*), or both* of sub-section (4) of section 83, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 9**WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS**

[See section 87]

To (*name and designation of the police officer or other person or persons who is or are to execute the warrant*).

Whereas complaint has been made before me that (*name and description of accused*) of (*address*) has (*or is suspected to have*) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint ; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so ;

This is to authorise and require you to arrest the said (*name of witness*), and on the.....day of.....to bring him before this Court, to be examined touching the offence complained of.

Dated, this.....day of.....19...

(Seal of the Court)

(Signature)

*Strike out the one which is not desired.

FORM NO. 10**WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE**

[See section 93]

To (name and designation of the police officer or other person or persons who is or are to execute the warrant).

Whereas information has been laid (or complaint has been made) before me of the commission (or suspected commission) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (or about to be made) into the said offence (or suspected offence) ;

This is to authorise and require you to search for the said (*the thing specified*) in the (*describe the house or place or part thereof to which the search is to be confined*), and, if found, to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 11**WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT**

[See section 94]

To (name and designation of a police officer above the rank of a constable)

Whereas information has been laid before me, and on due inquiry thereupon had, I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (or sale) of stolen property (or if for either of the other purposes expressed in the section, state the purpose in the words of the section) ;

This is to authorise and require you to enter the said house (or other place) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (or other place, or if the search is to be confined to a part, specify the part clearly), and to seize and take possession of any property (or documents, or stamps, or seals, or coins, or obscene objects, as the case may be) (add, when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coins or counterfeit currency notes (as the case may be), and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 12**BOND TO KEEP THE PEACE**

[See sections 106 and 107]

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of.....or until the completion of the inquiry in the matter of.....now pending in the Court of....., I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term or until the completion of the said inquiry and, in case of my making default therein, I hereby bind myself to forfeit to Government the sum of rupees.....

Dated, this.....day of....., 19...

(Signature)

FORM NO. 13**BOND FOR GOOD BEHAVIOUR**

[See sections 108; 109 and 110]

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Government and all the citizens of India for the term of (*state the period*) or until the completion of the inquiry in the matter of.....now pending in the Court of....., I hereby bind myself to be of good behaviour to Government and all the citizens of India during the said term or until the completion of the said inquiry ; and, in case of my making default therein, I hereby bind myself to forfeit to Government the sum of rupees.....

Dated, this.....day of....., 19...

(Signature)

(Where a bond with sureties is to be executed, add—)

We do hereby declare ourselves sureties for the above-named.....that he will be of good behaviour to Government and all the citizens of India during the said term or until the completion of the said inquiry ; and in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Government the sum of rupees.....

Dated, this..... day of.....19...

(Signature)

FORM NO. 14**SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE**

[See section 113]

To.....of.....

Whereas it has been made to appear to me by credible information that (*state the substance of information*), and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by a duly authorised agent*) at the office of the Magistrate ofon theday of.....19....., at ten o'clock in the forenoon, to show cause why you should not be required to enter

into a bond for rupees.....[when sureties are required, add, and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees.....(each if more than one)] that you will keep the peace for the term of.....

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 15

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE

[See section 122]

To the Officer in charge of the Jail at.....

Whereas (*name and address*) appeared before me in person (or by his authorised agent) on the.....day of.....in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees.....with one surety (or a bond with two sureties each in rupees.....), that he, the said (*name*), would keep the peace for the period of.....months ; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order ;

This is to authorise and require you to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime be lawfully ordered to be released, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 16

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR

[See section 122]

To the Officer in charge of the Jail at.....

Whereas it has been made to appear to me that (*name and description*) has been concealing his presence within the district of.....and that there is reason to believe that he is doing so with a view to committing a cognizable offence ;

or

Whereas evidence of the general character of (*name and description*) has been adduced before me and recorded, from which it appears that he is an habitual robber (or house-breaker, etc., as the case may be) ;

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (or two or more sureties, as the

case may be), himself for rupees....., and the said surety (or each of the said sureties) for rupees....., and the said (*name*) has failed to comply with the said order and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished ;

This is to authorise and require you to receive the said (*name*) into your custody, together with this warrant and him safely to keep in the Jail, or if he is already in prison, be detained therein, for the said period of (*term of imprisonment*) unless he shall in the meantime be lawfully ordered to be released, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 17

WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY -

[See sections 122 and 123]

To the Officer incharge of the Jail at.....(*or other officer in whose custody the person is*).

Whereas (*name and description of prisoner*) was committed to your custody under warrant of the Court, dated the.....day of.....19...; and has since duly given security under section.....of the Code of Criminal Procedure, 1973 ;

or

Whereas (*name and description of prisoner*) was committed to your custody under warrant of the Court, dated the.....day of.....19...; and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community ;

This is to authorise and require you forthwith to discharge the said (*name*) from your custody unless he is liable to be detained for some other cause.

Dated, this.....day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 18

WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE

[See section 125]

To the Officer in charge of the Jail at.....

Whereas (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or his child (name) or his father or mother (name)*], who is by reason of (*state the reason*) unable to maintain herself(*or himself*)] and to have neglected (or refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (or child or father or mother) for maintenance the monthly sum of rupees.....; and whereas it has been further proved that the said (*name*) in wilful disregard of

the said order has failed to pay rupees..... ; being the amount of the allowance for the month (or months) of..... ;

And thereupon an order was made adjudging him to undergo imprisonment in the said Jail for the period of..... ;

This is to authorise and require you to receive the said (*name*) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 19

WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY ATTACHMENT AND SALE

[See section 125]

To (*name and designation of the police officer or other person to execute the warrant*).

Whereas an order has been duly made requiring (*name*) to allow to his said wife (or child or father or mother) for maintenance the monthly sum of rupees....., and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees....., being the amount of the allowance for the month (or months) of..... ;

This is to authorise and require you to attach any movable property belonging to the said (*name*) which may be found within the district of....., and if within (*state the number of days or hours allowed*) next after such attachment the said sum shall not be paid (or forthwith), to sell the movable property attached, or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this..... day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 20

ORDER FOR THE REMOVAL OF NUISANCES

[See section 133]

To (*name, description and address*).

Whereas it has been made to appear to me that you have caused an obstruction (or nuisance) to persons using the public roadway (or other public place) which, etc., (*describe the road or public place*), by, etc., (*state what it is that causes the obstruction or nuisance*), and that such obstruction (or nuisance) still exists ;

or

Whereas it has been made to appear to me that you are carrying on, as owner, or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public

health (or comfort) by reason (*state briefly in what manner the injurious effects, are caused*), and should be suppressed or removed to a different place ;

or

Whereas it has been made to appear to me that you are the owner (or are in possession of or have the control over) a certain tank (or well or excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (or well or excavation) being without a fence (or insecurely fenced) ;

or

Whereas etc., etc., (*as the case may be*) ;

I do hereby direct and require you within (*state the time allowed*) (*state what is required to be done to abate the nuisance*) or to appear at.....in theCourt of.....on the.....day of.....next, and to show cause why this order should not be enforced ;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc. ;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*) ; or to appear, etc. ;

or

I do hereby direct and require you, etc., etc., (*as the case may be*).

Dated, this..... day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 21

MAGISTRATE'S NOTICE AND PREEMPTORY ORDER

[See section 141]

To (*name, description and address*).

I hereby give you notice that it has been found that the order issued on theday of.....requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*), on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Dated, this.....day of....., 19....

(Seal of the Court)

(Signature)

FORM NO. 22**INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING
INQUIRY**

[See section 142]

To *(name, description and address)*.

Whereas the inquiry into the conditional order issued by me on the.....day of19....., is pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with such imminent danger or injury of a serious kind to the public as to render necessary immediate measures to prevent such danger or injury, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, 1973, direct and enjoin you forthwith to *(state plainly what is required to be done as a temporary safeguard)*, pending the result of the inquiry.

Dated, this.....day of....., 19...

*(Seal of the Court)**(Signature)***FORM NO. 23****MAGISTRATE'S ORDER PROHIBITING THE REPETITION, ETC., OF A
NUISANCE**

[See section 143]

To *(name, description and address)*.

Whereas it has been made to appear to me that, etc. *(state the proper recital, guided by Form No. 20 or Form No. 24, as the case may be)* ;

I do hereby strictly order and enjoin you not to repeat or continue, the said nuisance.

Dated, this.....day of....., 19...

*(Seal of the Court)**(Signature)***FORM NO. 24****MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, ETC.**

[See section 144]

To *(name, description and address)*.

Whereas it has been made to appear to me that you are in possession *(or have the management)* of *(describe clearly the property)*, and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug-up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road ;

or

Whereas it has been made to appear to me that you and a number of other persons *(mention the class of persons)* are about to meet and proceed in a procession along the public street, etc. *(as the case may be)* and that such procession is likely to lead to a riot or an affray ;

or

Whereas, etc., etc., (*as the case may be*) ;

I do hereby order you not to place or permit to be placed any of the earth or stones dug from land on any part of the said road ;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Dated, this.....day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 25

**MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN
POSSESSION OF LAND, ETC., IN DISPUTE**

[*See section 145*]

It appears to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*), situate within my local jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true ; I do decide and declare that he is (*or they are*) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or their*) possession in the meantime.

Dated, this.....day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 26

**WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE
POSSESSION OF LAND, ETC.**

[*See section 146*]

To the Police Officer in charge of the police station at.....
(*or, To the Collector of.....*).

Whereas it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said

(*the subject of dispute*), and whereas, upon the due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) (*for I am unable to satisfy myself as to which of the said parties was in possession as aforesaid*) ;

This is to authorise and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 27

MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER

[See section 147]

A dispute having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within my local jurisdiction, the possession of which land (*or water*) is claimed exclusively by (*describe the person or persons*), and it appears to me, on due inquiry into the same, that the said land (*or water*) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*) and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or if the use is enjoyable only at a particular season, say, "during the last of the seasons at which the same is capable of being enjoyed"*) ;

I do order that the said (*the claimant or claimants of possession*) or any one in their interest, shall not take (*or retain*) possession of the said land (*or water*) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or they*) shall obtain the decree or order of a competent Court adjudging him (*or them*) to be entitled to exclusive possession.

Dated, this.....day of....., 19

(*Seal of the Court*)

(*Signature*)

FORM NO. 28

BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE OFFICER

[See section 169]

I, (*name*), of..... ; being charged with the offence of....., and after inquiry required to appear before the Magistrate of

or

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear atin the Court of....., on the.....day of.....next (*or on such day as I may hereafter be required, to attend*) to answer further to the said charge, and in case of my making default herein, I bind myself to forfeit to Government, the sum of rupees.....

Dated, this.....day of....., 19...

(*Signature*)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the abovesaid (name) that he shall attend at.....in the Court of..... on the..... day of..... next (or on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (or we hereby bind ourselves) to forfeit to Government the sum of rupees.....

(Signature)

Dated, this.....day of....., 19...

FORM NO. 29**BOND TO PROSECUTE OR GIVE EVIDENCE**

[See section 170]

I, (name), of (place).....do hereby bind myself to attend at..... in the Court of.....at.....o'clock on the.....day of..... next and then and there to prosecute (or to prosecute and give evidence) (or to give evidence) in the matter of a charge of..... against one A.B., and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees.....

Dated, this.....day of....., 19...

(Signature)

FORM NO. 30**SPECIAL SUMMONS TO A PERSON ACCUSED OF A PETTY OFFENCE**

[See section 206]

To

.....
(Name of the accused)
of.....(address)

Whereas your attendance is necessary to answer a charge of a petty offence (state shortly the offence charged), you are hereby required to appear in person (or by pleader) before.....(Magistrate) of.....on the.....day of..... 19....., or if you desire to plead guilty to the charge without appearing before the Magistrate, to transmit before the aforesaid date the plea of guilty in writing and the sum of.....rupees as fine, or if you desire to appear by pleader and to plead guilty through such pleader, to authorise such pleader in writing to make such a plea of guilty on your behalf and to pay the fine through such pleader. Herein fail not.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

(Note : The amount of fine specified in this summons shall not exceed one hundred rupees.)

FORM NO. 31**NOTICE OF COMMITMENT BY MAGISTRATE TO PUBLIC PROSECUTOR**

[See section 209]

The Magistrate of.....hereby gives notice that he has committed one..... for trial at the next Sessions ; and the Magistrate hereby instructs the Public Prosecutor to conduct the prosecution of the said case.

The charge against the accused is that, etc. (*state the offence as in the charge*).

Dated, this.....day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 32

CHARGES

[See sections 211, 212 and 213]

I. Charges with one head

(1)(a) I, (*name and office of Magistrate, etc.*), hereby charge you (*name of accused person*) as follows :—

On section 121.

(b) that you, on or about the.....day of....., at....., waged war against the Government of India and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of this Court.

(c) And I hereby direct that you be tried by this Court on the said charge.

(*Signature and Seal of the Magistrate*)

[To be substituted for (b)]:—

On section 124.

(2) That you, on or about the.....day of....., at....., with the intention of inducing the President of India [*or, as the case may be, the Governor of (name of State)*] to refrain from exercising a lawful power as such President (*or, as the case may be, the Governor*), assaulted President (*or, as the case may be, the Governor*) and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of this Court.

On section 161.

(3) That you, being a public servant in the.....Department, directly accepted from (*state the name*) for another party (*state the name*) gratification other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code and within the cognizance of this Court.

On section 166.

(4) That you, on or about the.....day of....., at....., did (*or omitted to do, as the case may be*)....., such conduct being contrary to the provisions of.....Act....., section.....and known by you to be prejudicial to....., and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of this Court.

On section 193.

(5) That you, on or about the.....day of....., at....., in the course of the trial of.....before....., stated in evidence that “.....” which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of this Court.

On section 304.

(6) That you, on or about the.....day of....., at....., committed culpable homicide not amounting to murder, causing the death of....., and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of this Court.

On section 306.

(7) That you, on or about the.....day of....., at....., abetted the commission of suicide by A.B., a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of this Court.

On section 325.

(8) That you, on or about the.....day of....., at..., voluntarily caused grievous hurt to....., and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of this Court.

On section 392.

(9) That you, on or about the.....day of....., at....., robbed (*state the name*), and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of this Court.

On section 395.

(10) That you, on or about the.....day of....., at....., committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of this Court.

II. Charges with two or more heads

(1) (a) I, (*name and office of Magistrate, -etc.*) hereby charge you (*name of accused person*) as follows :—

On section 241.

(b) *First*—That you, on or about the.....day of....., at....., knowing a coin to be counterfeit, delivered the same to another person, by name, A.B., as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly—That you, on or about the.....day of....., at....., knowing a coin to be counterfeit, attempted to induce another person, by name, A.B., to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

(c) And I hereby direct that you be tried by the said Court on the said charge.

(*Signature and Seal of the Magistrate*)

[*To be substituted for (b)*] :—

On sections 302 and 304.

(2) *First*—That you, on or about the.....day of....., at....., committed murder by causing the death of....., and thereby committed an offence

punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly—That you, on or about the.....day of....., at....., by causing the death of....., committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

On sections 379 and 382.

(3) *First*—That you, on or about the.....day of....., at....., committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly—That you, on or about the.....day of....., at....., committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Thirdly—That you, on or about the.....day of....., at....., committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Fourthly—That you, on or about the.....day of....., at....., committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Alternative charge on section 193.

(4) That you, on or about the.....day of....., at....., in the course of the inquiry into....., before....., stated in evidence that “.....”, and that you, on or about the.....day of....., at....., in the course of the trial of....., before....., stated in the evidence that “.....”, one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session.

(*In cases tried by Magistrates substitute “within my cognizance” for “within the cognizance of the Court of Session”.*)

III. Charges for theft after previous conviction

I, (name and office of Magistrate, etc.), hereby charge you (name of accused person) as follows :—

That you, on or about the.....day of....., at....., committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session (or Magistrate, as the case may be).

And you, the said (name of accused), stand further charged that you, before the committing of the said offence, that is to say, on the.....day of....., had

been convicted by the (*state Court by which conviction was had*) at.....of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, etc.

FORM NO. 33
SUMMONS TO WITNESS
 [See sections 61 and 244]

To....., of.....

Whereas complaint has been made before me that (*name of the accused*) of (*address*) has (*or is suspected to have*) committed the offence of (*state the offence concisely with time and place*), and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution ;

You are hereby summoned to appear before this Court on the.....day of.....next at ten o'clock in the forenoon, to produce such document or thing or to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court ; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Dated, this.....day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 34

WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE

[See sections 248 and 255]

To the Officer in charge of Jail at.....

Whereas on the.....day of.....(*name of prisoner*), the (1st, 2nd, 3rd, as the case may be) prisoner in case No.....of the Calendar for 19....., was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or sections*) of the Indian Penal Code (*or of.....Act.....*), and was sentenced to (*state the punishment fully and distinctly*) ;

This is to authorise and require you to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and thereby carry the aforesaid sentence into execution according to law.

Dated, this.....day of....., 19...

(*Seal of the Court*)

(*Signature*)

FORM NO. 35**WARRANT OF IMPRISONMENT ON FAILURE TO PAY COMPENSATION**

[See section 250]

To the Officer in charge of the Jail at.....

Whereas (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*) and the same has been dismissed on the ground that there was no reasonable ground for making the accusation against the said (*name*) and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees.....as compensation ; and whereas the said sum has not been paid and an order has been made for his simple imprisonment in Jail for the period of.....days, unless the aforesaid sum be sooner paid ;

This is to authorise and require you to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of.....19...

(Seal of the Court)

(Signature)

FORM NO. 36**ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR ANSWERING TO CHARGE OF OFFENCE**

[See section 267]

To

The Officer in charge of the Jail at.....

Whereas the attendance of (*name of prisoner*) at present confined/detained in the above-mentioned prison, is required in this Court to answer to a charge of (*state shortly the offence charged*) or for the purpose of a proceeding (*state shortly the particulars of the proceeding*) ;

You are hereby required to produce the said.....under safe and sure conduct before this Court.....on the.....day of....., 19..., by..... A.M. there to answer to the said charge, or for the purpose of the said proceeding, and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

And you are further required to inform the said.....of the contents of this order and deliver to him the attached copy thereof.

Dated, this..... day of19...

(Signature)

(Seal of the Court)

Countersigned.

(Seal)

(Signature)

FORM NO. 37**ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR
GIVING EVIDENCE**

[See section 267]

To

The Officer in charge of the Jail at.....

Whereas complaint has been made before this Court that (*name of the accused*) of.....has committed the offence of (*state offence concisely with time and place*) and it appears that (*name of prisoner*) at present confined/detained in the above-mentioned prison, is likely to give material evidence for the prosecution/defence ;

You are hereby required to produce the said..... under safe and sure conduct before this Court at on the.....day of....., 19....., by..... ..A.M. there to give evidence in the matter now pending before this Court, and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

And you are further required to inform the said..... .. of the contents of this order and deliver to him the attached copy thereof.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)
Countersigned.

(Seal)

(Signature)

FORM NO. 38**WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A
FINE IS IMPOSED**

[See section 345]

To the Officer in charge of the Jail at.....

Whereas at a Court held before me on this day (*name and description of the offender*) in the presence (*or view*) of the Court committed wilful contempt ;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees....., or in default to suffer simple imprisonment for the period of (*state the number of months or days*) ;

This is to authorise and require you to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid ; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 39**MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS
REFUSING TO ANSWER OR TO PRODUCE DOCUMENT**

[See section 349]

To (*name and designation of officer of Court*)

Whereas (*name and description*), being summoned (*or* brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, *or* having been called upon to produce any document has refused to produce such document, without, alleging any just excuse for such refusal, and for his refusal has been ordered to be detained in custody for (*term of detention adjudged*) ;

This is to authorise and require you to take the said (*name*) into custody, and him safely to keep in your custody for the period ofdays, unless in the meantime he shall consent to be examined and to answer the questions asked of him, *or* to produce the document called for from him, and on the last of the said days, *or* forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 40**WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH**

[See section 366]

To the Officer in charge of the Jail at.....

Whereas at the Session held before me on the.....day of....., 19.....(*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No.....of the Calendar for 19... at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section.....of the Indian Penal Code, and sentenced to death, subject to the confirmation of the said sentence by the.....Court of.....;

This is to authorise and require you to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and him there safely to keep until you shall receive the further warrant *or* order of this Court, carrying into effect the order of the said.....Court.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 41**WARRANT AFTER A COMMUTATION OF A SENTENCE**

[See section 386]

To the Officer in charge of the Jail at.....

Whereas at a Session held on the.....day of.....19....., (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No..... of the Calendar for 19... at the said Session, was convicted of the offence of..... punishable under section.....of the Indian Penal Code, and sentenced to....., and was thereupon committed to your custody ; and whereas by the order of the.....Court of(a duplicate of which is hereunto annexed the punishment adjudged by the said sentence has been commuted to the punishment of imprisonment for life ;

This is to authorise and require you safely to keep the said (*prisoner's name*) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of imprisonment for life under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said jail", "and there to carry into execution the punishment of imprisonment under the said order according to law".

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO 42**WARRANT OF EXECUTION OF A SENTENCE OF DEATH**

[See section 414]

To the Officer in charge of the Jail at.....

Whereas (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No.....of the Calendar for 19....., at the Session held before me on the.....day of....., 19.....has been by warrant of the Court, dated the.....day of....., committed to your custody under sentence of death ;.....and whereas the order of the High Court at.....confirming the said sentence has been received by this Court ;

This is to authorise and require you to carry the said sentence into execution by causing the said.....to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed,

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 43

WARRANT TO LEVY A FINE BY ATTACHMENT AND SALE

[See section 421]

To (name and designation of the police officer or other person or persons who is or are to execute the warrant).

Whereas (name and description of the offender) was on the.....day of....., 19..., convicted before me of the offence of (mention the offence concisely), and sentenced to pay a fine of rupees..... ; and whereas the said (name) although required to pay the said fine, has not paid the same or any part thereof ;

This is to authorise and require you to attach any movable property belonging to the said (name), which may be found within the district of..... ; and, if within (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the movable property attached, or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Date, this.....day of....., 19...

(Seal of the Court)

(Signature)

FORM NO. 44

WARRANT FOR RECOVERY OF FINE

[See section 421]

To the Collector of the district of.....

Whereas (name, address and description of the offender) was on the..... day of, 19..., convicted before me of the offence of (mention the offence concisely), and sentenced to pay a fine of rupees..... ; and

Whereas the said (name), although required to pay the said fine, has not paid the same or any part thereof ;

You are hereby authorised and requested to realise the amount of the said fine as arrears of land revenue from the movable or immovable property, or both, of the said (name) and to certify without delay what you may have done in pursuance of this order.

Dated, this.....day of....., 19.....

(Seal of the Court)

(Signature)

¹[FORM NO. 44A]**BOND FOR APPEARANCE OF OFFENDER RELEASED PENDING
REALISATION OF FINE**

[See section 424(1)(b)]

Whereas I, (*name*), inhabitant of (*place*), have been sentenced to pay a fine of rupees.....and in default of payment thereof to undergo imprisonment for.....; **and whereas** the Court has been pleased to order my release on condition of my executing a bond for my appearance on the following date (or dates), namely :—

I hereby bind myself to appear before the Court of.....at.....o'clock on the following date (or dates), namely :—

and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees.....

Dated, this.....day of....., 19... (Signature)

WHERE A BOND WITH SURETIES IS TO BE EXECUTED, ADD—

We do hereby declare ourselves sureties for the above-named that he will appear before the Court of.....on the following date (or dates), namely :—

and, in case of his making default therein, we bind ourselves jointly and severally to forfeit to Government the sum of rupees.....

(Signature)]

FORM NO. 45**BOND AND BAIL-BOND FOR ATTENDANCE BEFORE OFFICER IN CHARGE OF
POLICE STATION OR COURT**

[See sections 436, 437, 438(3) and 441]

I, (*name*)..... of.....(*place*), having been arrested or detained without warrant by the Officer in charge of.....police station (or having been brought before the Court of.....), charged with the offence of....., and required to give security for my attendance before such Officer or Court on condition that I shall attend such officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default herein, I bind myself to forfeit to Government the sum of rupees.....

Dated, this.....day of....., 19..... (Signature)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the above said (*name*)..... that he shall attend the Officer in charge of.....police station or the Court of..... on every day on which any investigation into the charge is made or any trial on such charge is held, that he shall be, and appear, before such officer or Court for the purpose of such investigation or to answer the charge against him (as the case may be), and, in case of his making default herein, I hereby bind myself (or we, hereby bind ourselves) to forfeit to Government the sum of rupees.....

Date, this.....day of....., 19... (Signature)

1. Inserted by the Code of Criminal Procedure (Amendment) Act, 1978.

FORM NO. 46**WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY**

[See section 442]

To the Officer in charge of the Jail.....
 (or other officer in whose custody the person is)

Whereas (name and description of prisoner) was committed to your custody under warrant of this Court, dated the.....day of....., and has since with his surety (or sureties) duly executed a bond under section 441 of the Code of Criminal Procedure ;

This is to authorise and require you forthwith to discharge the said (name) from your custody, unless he is liable to be detained for some other matter.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)

¹[FORM NO. 47]**WARRANT OF ATTACHMENT TO ENFORCE A BOND**

[See section 446]

To the Police Officer in charge of the police station at.....

Whereas (name, description and address of person) has failed to appear on (mention the occasion) pursuant to his recognizance, and has by default forfeited to Government the sum of rupees (the penalty in the bond) ; and whereas the said (name of person) has, on due notice to him ; failed to pay the said sum or show any sufficient cause why payment should not be enforced against him ;

This is to authorise and require you to attach any movable property of the said (name) that you may find within the district of....., by seizure and detention, and, if the said amount be not paid within.....days, to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)]

¹[FORM NO. 48]**NOTICE TO SURETY ON BREACH OF A BOND**

[See section 446]

To....., of.....

Whereas on the.....day of....., 19..., you became surety for (name) of (place) that he should appear before this Court on the.....day of..... and bound yourself in default thereof to forfeit the sum of rupees.....to Government ; and whereas the said (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees..... ;

You are hereby required to pay the said penalty or show cause, within..... days from this date, why payment of the said sum should not be enforced against you.

Dated, this.....day of....., 19....

(Seal of the Court)

(Signature)]

1. Inserted by the Code of Criminal Procedure (Amendment) Act, 1978.

¹[FORM NO. 49]

NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR

[See section 446]

To.....of.....

Whereas on the.....day of....., 19..., you became surety by a bond for (name) of (place) that he would be of good behaviour for the period of..... and bound yourself in default thereof to forfeit the sum of rupees..... to Government ; and whereas the said (name) has been convicted of the offence of (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited ;

You are hereby required to pay the said penalty of rupees..... or to show cause within.....days why it should not be paid.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)]

¹[FORM NO. 50]

WARRANT OF ATTACHMENT AGAINST A SURETY

[See section 446]

To.....of.....

Whereas (name, description and address) has bound himself as surety for the appearance of (mention the condition of the bond) and the said (name) has made default, and thereby forfeited to Government the sum of rupees.....(the penalty in the bond) ;

This is to authorise and require you to attach any movable property of the said (name) which you may find within the district of....., by seizure and detention ; and, if the said amount be not paid within.....days, to sell the property so attached, or so much of it as may be sufficient to realise the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)]

1. Inserted by the Code of Criminal Procedure (Amendment) Act, 1978.

[FORM NO. 51**WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED
PERSON ADMITTED TO BAIL**

[See section 446]

To the Superintendent (or Keeper) of the Civil Jail at.....

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of (state the condition of the bond) and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Government ; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of his movable property, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*) ;

This is to authorise and require you, the said Superintendent (or Keeper) to receive the said (*name*) into your custody with this warrant and to keep him safely in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)]

[FORM NO. 52**NOTICE TO THE PRINCIPAL OF FORFEITURE OF BOND TO KEEP THE PEACE**

[See section 446]

To (*name, description and address*)

Whereas on the.....day of....., you entered into a bond not to commit, etc., (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded ;

You are hereby called upon to pay the said penalty of rupees.....or to show cause before me within.....days why payment of the same should not be enforced against you.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)]

1. Inserted by the Code of Criminal Procedure (Amendment) Act, 1978.

¹[FORM NO. 53]**WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE**

[See section 446]

To (*name and designation of police officer*), at the police station of.....

Whereas (*name and description*) did, on the.....day of....., 19....., enter into a bond for the sum of rupees.....binding himself not to commit a breach of the peace, etc., (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded ; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum ;

This is to authorise and require you to attach by seizure movable property belonging to the said (*name*) to the value of rupees....., which you may find within the district of..... and, if the said sum be not paid within....., to sell the property so attached, or so much of it as may be sufficient to realize the same ; and to make return of what you have done under this warrant immediately upon its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)]

¹[FORM NO. 54]**WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE**

[See section 446]

To the Superintendent (or Keeper) of the Civil Jail at.....

Whereas proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace whereby he has forfeited to Government the sum of rupees..... ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*) ;

This is to authorise and require you, the said Superintendent (or Keeper) of the said Civil Jail to receive the said (*name*) into your custody, together with this warrant, and to keep him safely in the said Jail for the said period of (*term of imprisonment*), and to return that warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)]

1. Inserted by the Code of Criminal Procedure (Amendment) Act, 1978.

¹[FORM NO. 55]WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR
GOOD BEHAVIOUR

[See section 446]

To the police officer in charge of the police station at.....

Whereas (*name, description and address*) did, on the.....day of....., 19....., give security by bond in the sum of rupees.....for the good behaviour of (*name, etc., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of.....whereby the said bond has been forfeited ; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum ;

This is to authorise and require you to attach by seizure movable property belonging to the said (*name*) to the value of the rupees.....which you may find within the district of....., and, if the said sum be not paid within....., to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)]

¹[FORM NO. 56]WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD
BEHAVIOUR

[See section 446]

To the Superintendent (or Keeper) of the Civil Jail at.....

Whereas (*name, description and address*) did, on the day of....., 19....., give security by bond in the sum of rupees.....for the good behaviour of (*name, etc., of the principal*) and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Government the sum of rupees....., and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*) ;

This is to authorise and require you, the Superintendent (or Keeper), to receive the said (*name*) into your custody, together with this warrant, and to keep him safely in the said Jail for the said period of (*term of imprisonment*) returning this warrant with an endorsement certifying the manner of its execution.

Dated, this.....day of....., 19...

(Seal of the Court)

(Signature)]

1. Inserted by the Code of Criminal Procedure (Amendment) Act, 1978.

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KOTTUR GARDENS
MADRAS - 600 085.

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2

THE INDIAN PENAL CODE

THE INDIAN PENAL CODE

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The Indian Penal Code

[45 of 1860]

CHAPTER I INTRODUCTION

Preamble.

Whereas it is expedient to provide a general Penal Code for India ; It is enacted as follows :—

Title and extent of operation of the Code.

1. This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir.

Punishment of offences committed within India.

2. Every person shall be liable punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

Punishment of offences committed beyond, but which by law may be tried within, India.

3. Any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

Extension of Code to extra-territorial offences.

4. The provisions of this Code apply also to any offence committed by—
 - (1) any citizen of India in any place without and beyond India ;
 - (2) any person on any ship or aircraft registered in India wherever it may be.

Explanation : In this section the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code.

Illustration

A, who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be bound.

Certain laws not to be affected by this Act.

5. Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

CHAPTER II**GENERAL EXPLANATIONS****Definitions in the Code to be understood subject to exceptions.**

6. Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations

(a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences ; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a police officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement ; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

Sense of expression once explained.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man"/"Woman".

10. The word "man" denotes a male human being of any age : the word "woman" denotes a female human being of any age.

"Person".

11. The word "person" includes any company or association or body of persons, whether incorporated or not.

"Public".

12. The word "public" includes any class of the public or any community.

Definition of "Queen".

13. [Omitted]

"Servant of Government".

14. The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.

Definition of "British India".

15. [Omitted]

Definition of "Government of India".

16. [Omitted]

"Government".

17. The word "Government" denotes the Central Government or the Government of a State.

"India".

18. "India" means the territory of India excluding the State of Jammu and Kashmir.

"Judge".

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person,—

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations

(a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

"Court of Justice".

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

"Public servant".

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :—

[Clause first omitted]

Second—Every Commissioned Officer in the Military, Naval or Air Forces of India ;*Third*—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions ;*Fourth*—Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process,

or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;

Fifth—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or Public servant ;

Sixth—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

Seventh—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth—Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

Ninth—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law of the protection of the pecuniary interests of the Government ;

Tenth—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district ;

Eleventh—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election ;

Twelfth—Every person—

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government ;
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Illustration

A Municipal Commissioner is a public servant.

Explanation 1 : Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2 : Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3 : The word “election” denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

‘Movable property’.

22. The words “movable property” are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

“Wrongful gain”/“Wrongful loss”.

23. “Wrongful gain” is the gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully/Losing wrongfully.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

“Dishonestly”.

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”:

“Fraudulently”.

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

“Reason to believe”.

26. A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.

Property in possession of wife, clerk or servant.

27. When property is in the possession of a person’s wife, clerk or servant, on account of that person, it is in that person’s possession within the meaning of this Code.

Explanation : A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

“Counterfeit”.

28. A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1 : It is not essential to counterfeiting that the imitation should be exact.

Explanation 2 : When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

“Document”.

29. The word “document” denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1 : It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-Attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2 : Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

"Valuable security".

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

"A will".

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omission.

"Act"/"Omission".

33. The word "act" denotes as well as series of acts as a single act ; the word "omission" denotes as well a series of omissions as a single omission.

Acts done by several persons in furtherance of common intention.

34. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B. A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here though A and B are both engaged in causing Z's death. B is guilty of murder, and A is guilty only of culpable homicide.

“Voluntarily”.

39. A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

“Offence”.

40. Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word “offence” denotes a thing made punishable by this Code. In Chapter IV, Chapter VA and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and

445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

"Special law".

41. A "special law" is a law applicable to a particular subject.

"Local law".

42. A "local law" is a law applicable only to a particular part of India.

"Illegal"/"Legally bound to do".

43. The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action : and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Injury".

44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

"Life".

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death".

46. The word "death" denotes the death of a human being unless the contrary appears from the context.

"Animal".

47. The word "animal" denotes any living creature, other than a human being.

"Vessel".

48. The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

"Year"/"Month".

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

"Section".

50. The word "section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

"Oath".

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good faith".

52. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

“Harbour”.

52A. Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word “harbour” includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.

CHAPTER III
OF PUNISHMENTS

Punishments.

53. The punishments to which offenders are liable under the provisions of this Code are—

First—Death ;

Secondly—Imprisonment for life ;

[*Thirdly*—Omitted ;]

Fourthly—Imprisonment, which is of two descriptions, namely :—

(1) Rigorous, that is, with hard labour ;

(2) Simple ;

Fifthly—Forfeiture of property ;

Sixthly—Fine.

Construction of reference to transportation.

53A. (1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to “transportation for life” in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to “imprisonment for life”.

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to “transportation” in any other law for the time being in force shall,—

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life ;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of imprisonment for life.

55. In every case in which sentence of imprisonment for life shall have been passed the appropriate Government may, without the consent of the

offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Definition of “appropriate Government”.

55A. In sections fifty-four and fifty-five the expression “appropriate Government” means—

- (a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government ; and
- (b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.

Sentence of Europeans and Americans to penal servitude/Proviso as to sentence for term exceeding ten years but not for life.

56. [Omitted]

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

Offenders sentenced to transportation how dealt with until transported.

58. [Omitted]

Transportation instead of imprisonment.

59. [Omitted]

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence of forfeiture of property.

61. [Omitted]

Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment.

62. [Omitted]

Amount of fine.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sentence of imprisonment for non-payment of fine.

64. In every case, of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Description of imprisonment for non-payment of fine.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Imprisonment for non-payment of fine, when offence punishable with fine only.

67. If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Imprisonment to terminate on payment of fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Termination of imprisonment on payment of proportional part of fine.

69. If before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

Fine leviable within six years, or during imprisonment/Death not to discharge property from liability.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period ; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Limit of punishment of offence made up of several offences.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided,

where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Solitary confinement.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months ;

a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year ;

a time not exceeding three months if the term of imprisonment shall exceed one year.

Limit of solitary confinement.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods : and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

75. Whoever, having been convicted,—

(a) by a Court in India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for term of three years or upwards,

(b) [Omitted]

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life or to imprisonment of either description for a term which may extend to ten years.

CHAPTER IV
GENERAL EXCEPTIONS

Act done by a person bound, or by mistake of fact believing himself bound, by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act done pursuant to the judgment or order of Court.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Accident in doing a lawful act.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

A is at work with a hatchet ; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation : It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Act of a child under seven years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child above seven and under twelve of immature understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Act of a person of unsound mind.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person incapable of judgment by reason of intoxication caused against his will.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law : provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would

have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

87. Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm ; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing, may be caused without foul play ; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death, done by consent in good faith for person's benefit.

88. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person :
Provided—

First—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death ;

Secondly—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ;

Fourthly—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear or misconception.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception ; or

Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent ; or

Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Exclusion of acts which are offences independently of harm caused.

91. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence “by reason of such harm”; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person’s consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit : Provided—

First—That this exception shall not extend to the intentional causing of death, or the attempting to cause death ;

Secondly—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt ;

Fourthly—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z’s death, but in good faith, for Z’s benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z’s benefit. A’s ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child’s guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child’s benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housetop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation : Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knows it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence : Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1 : A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2 : A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law ; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the right of Private Defence

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

First—His own body, and the body of any other person, against any offence affecting the human body ;

Secondly—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Right of private defence against the act of a person of unsound mind, etc.

98. When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations

(a) Z, under the influence of madness, attempts to kill A ; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1 : A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2 : A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

When the right of private defence of the body extends to causing death.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

First—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

Secondly—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

Thirdly—An assault with the intention of committing rape ;

Fourthly—An assault with the intention of gratifying unnatural lust ;

Fifthly—An assault with the intention of kidnapping or abducting ;

Sixthly—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

When such right extends to causing any harm other than death.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed ; and it continues as long as such apprehension of danger to the body continues.

When the right of private defence of property extends to causing death.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

First—Robbery ;

Secondly—House-breaking by night ;

Thirdly—Mischief by fire committed on any building, tent or vessel, which building tent or vessel is used as a human dwelling, or as a place for the custody of property ;

Fourthly—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Right of private defence against a deadly assault when there is risk of harm to innocent person.

106. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

**CHAPTER V
OF ABETMENT**

Abetment of a thing.

107. A person abets the doing of a thing, who—

First—Instigate any person to do that thing ; or

Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or

Thirdly—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 : A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C, is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2 : Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

108. A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1 : The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2 : To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3 : It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence. A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwellings-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4 : The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder ; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5 : It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison, Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

Abetment in India of offences outside India.

108A. A person abets an offence within the meaning of this Code who, in India, abets the commission of any act without and beyond India which would constitute an offence if committed in India.

Illustration

A, in India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

109. Whoever abets an offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code

for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation : An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Punishment of abetment if person abetted does act with a different intention from that of abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Liability of abettor when one act abetted and different act done.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it :

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A though guilty of abetting the burning of the house, is not guilty of abetting the theft, for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murders Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Abettor when liable to cumulative punishment for act abetted and for act done.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration

A instigates B to resist by force a distress made by a public servant B, in consequence, resists that distress. In offering the resistance B voluntarily causes grievous hurt to the officer

executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress. A will also be liable to punishment for each of the offences.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Abettor present when offence is committed.

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abetment of offence punishable with death or imprisonment for life.

115. *If offence not committed.*—Whoever abets the commission of an offence punishable with death or imprisonments for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If act causing harm be done in consequence.—and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or imprisonment for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Abetment of offence punishable with imprisonment.

116. *If offence be not committed.*—Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

If abettor or person abetted be a public servant whose duty it is to prevent offence.—and if the abettor or the person abetted is a public servant, whose duty it is to

prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Abetting commission of offence by the public or by more than ten persons.

117. Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

Concealing design to commit offence punishable with death or imprisonment for life.

118. Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or imprisonment for life ;

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design ;

If offence be committed/If offence be not committed.—shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description, for a term which may extend to three years ; and in either case shall also be liable to fine.

Illustration

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

Public servant concealing design to commit offence which it is his duty to prevent.

119. Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent ;

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design ;

If offence be committed.—shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both ;

If offence be punishable with death, etc.—or, if the offence be punishable with death or imprisonment for life, with imprisonment of either description for a term which may extend to ten years ;

If offence be not committed.—or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

Concealing design to commit offence punishable with imprisonment.

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

If offence be committed/If offence be not committed.—shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

CHAPTER VA

CRIMINAL CONSPIRACY

Definition of criminal conspiracy.

120A. When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation : It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Punishment of criminal conspiracy.

120B. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

CHAPTER VI

OF OFFENCES AGAINST THE STATE

Waging or attempting to wage war or abetting waging of war against the Government of India.

121. Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Illustration

A joins an insurrection against the Government of India. A has committed the offence defined in this section.

Conspiracy to commit offences punishable by section 121.

121A. Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation : To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Collecting arms, etc., with intention of waging war against the Government of India.

122. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall be liable to fine.

Concealing with intent to facilitate design to wage war.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Government of India, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.

124. Whoever, with the intention of inducing or compelling the President of India, or the Governor of any State, to exercise or refrain from exercising in any manner of the lawful powers of such President or Governor, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such President or Governor, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

Sedition.

124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1 : The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2 : Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3 : Comments expressing disapprobation of the administrative or other action of the Government without existing or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Waging war against any Asiatic power in alliance with the Government of India.

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Government of India or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Committing depredation on territories of power at peace with the Government of India.

126. Whoever commits depredation, or makes preparations to commit depredation on the territories of any Power in alliance or at peace with the Government of India, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

Receiving property taken by war or depredation mentioned in sections 125 and 126.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Public servant voluntarily allowing prisoner of State or war to escape.

128. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant negligently suffering such prisoner to escape.

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be

punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Aiding escape of, rescuing or harbouring such prisoner.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation : A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII

OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation : In this section the words "officer", "soldier", "sailor" and "airman" include any person subject to the Army Act, the Army Act, 1950 (46 of 1950), the Naval Discipline Act, the Indian Navy (Discipline) Act, 1934 (34 of 1934), the Air Force Act or the Air Force Act, 1950 (45 of 1950), as the case may be.

Abetment of mutiny if mutiny is committed in consequence thereof.

132. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death, or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.

133. Whoever, abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of such assault, if the assault is committed.

134. Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of desertion of soldier, sailor or airman.

135. Whoever abets the desertion of any officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall be

punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring deserter.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, has deserted, harbours such officer, soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception : This provision does not extend to the case in which the harbour is given by a wife to her husband.

Deserter concealed on board merchant vessel through negligence of master.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army, Navy or Air Force of the Government of India is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Abetment of act of insubordination by soldier, sailor or airman.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Application of foregoing sections to the Indian Marine Service.

138A. [Omitted]

Persons subject to certain Acts.

139. No person subject to the Army Act, the Army Act, 1950 (46 of 1950), the Naval Discipline Act, the Indian Navy (Discipline) Act, 1934 (34 of 1934), the Air Force Act or the Air Force Act, 1950 (45 of 1950) ; is subject to punishment under this Code for any of the offences defined in this Chapter.

Wearing garb or carrying token used by soldier, sailor or airman.

140. Whoever, not being a soldier, sailor or airman in the Military, Naval or Air service of the Government of India, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman with the intention that it may be believed that he is such a soldier, sailor or airman shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

Unlawful assembly.

141. An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

First—To overawe by criminal force, or show of criminal force the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant ; or

Second—To resist the execution of any law, or of any legal process ; or

Third—To commit any mischief or criminal trespass, or other offence ; or

Fourth—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

Fifth—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation : An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Being member of unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Punishment.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Joining unlawful assembly armed with deadly weapon.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Rioting.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Punishment for rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Rioting, armed with deadly weapon.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Hiring, or conniving at hiring, of persons to join unlawful assembly.

150. Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation : If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

Assaulting or obstructing public servant when suppressing riot, etc.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Wantonly giving provocation with intent to cause riot—If rioting be committed/If not committed.

153. Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

153A. (1) Whoever—

- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community

or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes, or communities, or

- (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or
- (c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) *Offence committed in place of worship, etc.*—Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Imputations, assertions prejudicial to national integration.

153B. (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

- (a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or
- (b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or
- (c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Owner or occupier of land on which an unlawful assembly is held.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Liability of person for whose benefit riot is committed.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Liability of agent of owner or occupier for whose benefit riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent, or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Being hired to take part in an unlawful assembly or riot.

158. Whoever is engaged, or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

Or to go armed.—and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall

be punished with imprisonment of either description for a term, which may extend to two years, or with fine, or with both.

Affray.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray".

Punishment for committing affray.

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

Public servant taking gratification other than legal remuneration in respect of an official act.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees, to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any local authority, corporation or Government company referred to in section 21, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations : "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification."—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.

"A motive or reward for doing."—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations

(a) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b) A, holding the office of Consul in a Foreign State, accepts a lakh of rupees from the Minister of that State. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that State with the Government of India. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that State. A has committed the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

Taking gratification, in order, by corrupt or illegal means, to influence public servant.

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any local authority, corporation or Government company referred to in section 21, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Taking gratification, for exercise or personal influence with public servant.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central or any State Government or Parliament or the Legislature of any State, or with any local authority, corporation or Government company referred to in section 21, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

An advocate who receives a fee for arguing a case before a Judge ; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist ; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust.—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of offences defined in section 162 or 163.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Illustrations

(a) A, a collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith. A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

Punishment for abetment of offences defined in section 161 or section 165.

165A. Whoever abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant disobeying law with intent to cause injury to any person.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

Public servant framing an incorrect document with intent to cause injury.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant unlawfully engaging in trade.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully buying or bidding for property.

169. Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term

which may extend to two years, or with fine, or with both ; and the property, if purchased, shall be confiscated.

Personating a public servant.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER IXA
OF OFFENCES RELATING TO ELECTIONS

“Candidate”, “Electoral right” defined.

171A. For the purposes of this Chapter—

- (a) “candidate” means a person who has been nominated as a candidate at any election ;
- (b) “electoral right” means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

Bribery.

171B. (1) Whoever—

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right ; or
- (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Undue influence at elections.

171C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

Personation at elections.

171D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

Punishment for bribery.

171E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both :

Provided that bribery by treating shall be punished with fine only.

Explanation : "Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

Punishment for undue influence or personation at an election.

171F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

False statement in connection with an election.

171G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

Illegal payments in connection with an election.

171H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

Failure to keep election accounts.

171-I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

CHAPTER X

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

Absconding to avoid service of summons or other proceeding.

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Non-attendance in obedience to an order from public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before the High Court at Calcutta in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a District Judge, as a witness, in obedience to a summons issued by that District Judge intentionally omits to appear. A has committed the offence defined in this section.

Omission to produce document to public servant by person legally bound to produce it.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Omission to give notice or information to public servant by person legally bound to give it.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898 (5 of 1898), with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished

with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Explanation : In section 176 and in this section the word “offence” includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 ; and the word “offender” includes any person who is alleged to have been guilty of any such act.

Refusing oath or affirmation when duly required by public servant to make it.

178. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to answer public servant authorised to question.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six month, or with fine which may extend to one thousand rupees, or with both.

Refusing to sign statement.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation.

181. Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to

be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False information, with intent to cause public servant to use his lawful power to the injury of another person.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

Resistance to the taking of property by the lawful authority of a public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Obstructing sale of property offered for sale by authority of public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Illegal purchase or bid for property offered for sale by authority of public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Obstructing public servant in discharge of public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Omission to assist public servant when bound by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Disobedience to order duly promulgated by public servant.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction ;

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both ;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation : It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

Threat of injury to public servant.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Threat of injury to induce person to refrain from applying for protection to public servant.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Giving false evidence.

191. Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1 : A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2 : A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations

(a) A, in support of a just claim which B has against Z for one thousand rupees falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

Fabricating false evidence.

192. Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".

Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z, to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1 : A trial before a Court-martial is a judicial proceeding.

Explanation 2 : An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3 : An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Giving or fabricating false evidence with intent to procure conviction of capital offence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force in India shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine ;

If innocent person be thereby convicted and executed.—and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.

195. Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to imprisonment for life or imprisonment, with or without fine.

Using evidence known to be false.

196. Whoever, corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Issuing or signing false certificate.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true a certificate known to be false.

198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

False statement made in declaration which is by law receivable as evidence.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Using as true such declaration knowing it to be false.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation : A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

Causing disappearance of evidence of offence, or giving false information to screen offender.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false ;

If a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

If punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

If punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Intentional omission to give information of offence by person bound to inform.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Giving false information respecting an offence committed.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation : In sections 201 and 202 and in this section the word “offence” includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False personation for purpose of act or proceeding in suit or prosecution.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

206. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent

authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

207. Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering decree for sum not due.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Dishonestly making false claim in Court.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Fraudulently obtaining decree for sum not due.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False charge of offence made with intent to injure.

211. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall

be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Harbouring offender

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment.

If a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine ;

If punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

“Offence” in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 ; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception : This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to imprisonment for life. A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Taking gift, etc., to screen an offender from punishment.

213. Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

If a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

If punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence

for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Offering gift or restoration of property in consideration of screening offender.

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or restores or causes the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

If a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

If punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception : The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

Taking gift to help to recover stolen property, etc.

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring offender who has escaped from custody or whose apprehension has been ordered.

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

If a capital offence.—if, the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

If punishable with imprisonment for life, or with imprisonment.—if the offence is punishable with imprisonment for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth

part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

“Offence” in this section includes also any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India ; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.

Exception : This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

Penalty for harbouring robbers or dacoits.

216A. Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation : For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without India.

Exception : This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

Definition of “harbour” in sections 212, 216 and 216A.

216B. [*Omitted*]

Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending hereby to save, or knowing it to be likely that he will hereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

218. Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant in judicial proceeding corruptly making report, etc., contrary to law.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Intentional omission to apprehend on the part of public servant bound to apprehend.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended was charged with, or liable to be apprehended for, an offence punishable with death ; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years ; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence or lawfully committed to custody, intentionally omits to apprehend such person or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

with imprisonment for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who sought to have been apprehended, is under sentence of death ; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to imprisonment for life or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not exceeding to ten years or if the person was lawfully committed to custody.

Escape from confinement or custody negligently suffered by public servant.

223. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation : The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Resistance or obstruction to lawful apprehension of another person.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

or, if the person to be apprehended, or the person attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to imprisonment for life or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or

imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise, provided for.

225A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

- (a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and
- (b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise, provided for.

225B. Whoever in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Unlawful return from transportation.

226. [Omitted].

Violation of condition of remission of punishment.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he was not already suffered.

Intentional insult or interruption to public servant sitting in judicial proceeding.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Personation of a juror or assessor.

229. Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

"Coin" defined.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

Indian coin.—Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money ; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

Illustrations

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin.
- (c) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d) The coin denominated as the Company's rupee is Indian coin.
- (e) The "Farukhabad rupee", which was formerly used as money under the authority of the Government of India is Indian coin although it is no longer so used.

Counterfeiting coin.

231. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation : A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Counterfeiting Indian coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Indian coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting Indian coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

If Indian coin.—and if the coin to be counterfeited is Indian coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting in India the counterfeiting out of India of coin.

236. Whoever, being within India, abets the counterfeiting of coin out of India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within India.

Import or export of counterfeit coin.

237. Whoever imports into India, or exports therefrom any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeits of the Indian coin.

238. Whoever imports into India, or exports therefrom, any counterfeit coin, which he knows or has reason to believe to be a counterfeit of Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is counterfeit.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Indian coin, possessed with knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin which is a counterfeit of Indian coin, and which, at the time when he became possessed of it, he knew, to be a counterfeit of Indian coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration

A, a coiner delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed is in possession of counterfeit coin, which is a counterfeit of Indian coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

244. Whoever, being employed in any mint lawfully established in India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking coining instrument from mint.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation : A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.

247. Whoever fraudulently or dishonestly performs on any Indian coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of coin with intent that it shall pass as coin of different description.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of Indian coin with intent that it shall pass as coin of different description.

249. Whoever performs on any Indian coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is altered.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Indian coin, possessed with knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of coin by person who knew it to be altered when he became possessed thereof.

252. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Indian coin by person who knew it to be altered when he became possessed thereof.

253. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 247 or 249 has been committed having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.

254. Whoever, delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may

extend to two years, or with fine to an amount which may extend to ten times, the value of the coin for which the altered coin is passed, or attempted to be passed.

Counterfeiting Government stamp.

255. Whoever, counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation : A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Having possession of instrument or material for counterfeiting Government stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Government stamp.

257. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as genuine a Government stamp known to be counterfeit.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

261. Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by

Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Using Government stamp known to have been before used.

262. Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

263. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Prohibition of fictitious stamps.

263A. (1) Whoever—

- (a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or
- (b) has in his possession, without lawful excuse, any fictitious stamp, or
- (c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials, in the possession of any person for making any fictitious stamp may be seized and, if seized shall be forfeited.

(3) In this section “fictitious stamp” means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word “Government”, when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive Government in any part of India, and also in any part of Her Majesty’s dominions or in any foreign country.

CHAPTER XIII

OF OFFENCES RELATING TO WEIGHTS AND MEASURES

Fraudulent use of false instrument for weighing.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false weight or measure.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight or of any measure of length or capacity, which he knows to be false, intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making or selling false weight or measure.

267. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV

**OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE,
DECENCY AND MORALS**

Public nuisance.

268. A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

Negligent act likely to spread infection of disease dangerous to life.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Malignant act likely to spread infection of disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disobedience to quarantine rule.

271. Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Adulteration of food or drink intended for sale.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of noxious food or drink.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of drugs.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of drug as a different drug or preparation.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Fouling water of public spring or reservoir.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Making atmosphere noxious to health.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Rash driving or riding on a public way.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash navigation of vessel.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Exhibition of false light mark or buoy.

281. Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Conveying person by water for hire in unsafe or overloaded vessel.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Danger or obstruction in public way or line of navigation.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Negligent conduct with respect to poisonous substance.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to fire or combustible matter.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to explosive substance.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to machinery.

287. Whoever does with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to pulling down or repairing buildings.

288. Whoever, in pulling down or repairing any building knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to animal.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Punishment for public nuisance in cases not otherwise provided for.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Continuance of nuisance after injunction to discontinue.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Sale, etc., of obscene books, etc.

292. (1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever—

- (a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- (b) imports, exports, or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or
- (c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or
- (e) offers or attempts to do any act which is an offence under this section,

shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

Exception : This section does not extend to—

- (a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—
 - (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or
 - (ii) which is kept or used *bona fide* for religious purposes ;
- (b) any representation sculptured, engraved, painted or otherwise represented on or in—
 - (i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or
 - (ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Sale, etc., of obscene objects to young person.

293. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

Obscene acts and songs.

294. Whoever, to the annoyance of others—

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Keeping lottery-office.

294A. Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorised by the State Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

CHAPTER XV**OF OFFENCES RELATING TO RELIGION****Injuring or defiling place of worship with intent to insult the religion of any class.**

295. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Disturbing religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be

punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Trespassing on burial places, etc.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any person assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Uttering words, etc., with deliberate intent to wound religious feelings.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

Of offences affecting life

Culpable homicide.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or, knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence ; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush ; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1 : A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2 : Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3 : The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a

living child, if any part of that child has been brought forth though the child may not have breathed or been completely born.

Murder.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly—If it is done with the intention of causing such bodily injury as the offender knows, to be likely to cause the death of the person to whom the harm is caused, or—

3rdly—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health. Here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

When culpable homicide is not murder.

Exception 1 : Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :

First—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation : Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2 : Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3 : Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 : Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation : It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 : Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death ; A has therefore abetted murder.

Culpable homicide by causing death of person other than person whose death was intended.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for murder.

302. Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.

Punishment for murder by life-convict.

303. Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

Punishment for culpable homicide not amounting to murder.

304. Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death ;
or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Causing death by negligence.

304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Abetment of suicide of child or insane person.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide.

306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Attempt to murder.

307. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping ; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Attempt to commit suicide.

309. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

Thug.

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

Punishment.

311. Whoever is a thug, shall be punished with imprisonment for life, and shall also be liable to fine.

Of the causing of miscarriage, of injuries to unborn children, of the exposure of infants, and of the concealment of births

Causing miscarriage.

312. Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation : A woman who causes herself to miscarry, is within the meaning of this section.

Causing miscarriage without woman's consent.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of

either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by act done with intent to cause miscarriage.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ;

If act done without woman's consent.—and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment abovementioned.

Explanation : It is not essential to this offence that the offender should know that the act is likely to cause death.

Act done with intent to prevent child being born alive or to cause it to die after birth.

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Causing death of quick unborn child by act amounting to culpable homicide.

316. Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die ; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Exposure and abandonment of child under twelve years, by parent or person having care of it.

317. Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation : This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Concealment of birth by secret disposal of dead body.

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Of hurt***Hurt.**

319. Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous" :—

First—Emasculation.

Secondly—Permanent privation of the sight of either eye.

Thirdly—Permanent privation of the hearing of either ear.

Fourthly—Privation of any member or joint.

Fifthly—Destruction or permanent impairing of the powers of any member or joint.

Sixthly—Permanent disfiguration of the head or face.

Seventhly—Fracture or dislocation of a bone or tooth.

Eighthly—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Voluntarily causing hurt.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

Voluntarily causing grievous hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

Explanation : A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Punishment for voluntarily causing hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Voluntarily causing hurt by dangerous weapons or means.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of

any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for voluntarily causing grievous hurt.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property, or to constrain to an illegal act.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, etc., with intent to commit an offence.

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort confession, or to compel restoration of property.

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead

to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

- (a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
- (b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.
- (c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z, A is guilty of an offence under this section.
- (d) A, a Zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to deter public servant from his duty.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt on provocation.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily causing grievous hurt on provocation.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend

to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation : The last two sections are subject to the same provisos as *Exception 1*, section 300.

Act endangering life or personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Causing hurt by act endangering life or personal safety of others.

337. Whoever causes hurt to any person by doing any act, so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing grievous hurt by act endangering life or personal safety of others.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Of wrongful restraint and wrongful confinement

Wrongful restraint.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception : The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Wrongful confinement.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Punishment for wrongful restraint.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful confinement.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Wrongful confinement for three or more days.

343. Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for ten or more days.

344. Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement of person for whose liberation writ has been issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

Wrongful confinement in secret.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement to extort property, or constrain to illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property of valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession, or compel restoration of property.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Of criminal force and assault***Force.**

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling : Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described :

First—By his own bodily power.

Secondly—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part. A has therefore intentionally used force to Z ; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z ; and if A has done this without Z's consent, intending or knowing it to be likely that he may hereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z ; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z ; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z ; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of

feeling ; A has therefore intentionally used force to Z ; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z. A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person is said to commit an assault.

Explanation : Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Punishment for assault or criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation : Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Assault or criminal force to deter public servant from discharge of his duty.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to woman with intent to outrage her modesty.

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt wrongfully to confine a person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assault or criminal force on grave provocation.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation : The last section is subject to the same explanation as section 352.

Of kidnapping, abduction, slavery and forced labour

Kidnapping.

359. Kidnapping is of two kinds : kidnapping from India, and kidnapping from lawful guardianship.

Kidnapping from India.

360. Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India.

Kidnapping from lawful guardianship.

361. Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation : The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception : This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Abduction.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Punishment for kidnapping.

363. Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or maiming a minor for purposes of begging.

363A. (1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section,—

(a) “begging” means—

- (i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise ;
- (ii) entering on any private premises for the purpose of soliciting or receiving alms ;
- (iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal ;
- (iv) using a minor as an exhibit for the purpose of soliciting or receiving alms ;

(b) “minor” means—

- (i) in the case of a male, a person under sixteen years of age ; and
- (ii) in the case of a female, a person under eighteen years of age.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping, abducting or inducing woman to compel her marriage, etc.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

Procuration of minor girl.

366A. Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Importation of girl from foreign country.

366B. Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

Kidnapping or abducting child under ten years with intent to steal from its person.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Selling minor for purposes of prostitution, etc.

372. Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I : When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II : For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

Buying minor for purposes of prostitution, etc.

373. Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I : Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II : "Illicit intercourse" has the same meaning as in section 372.

Unlawful compulsory labour.

374. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Of rape***Rape.**

375. A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

First—Against her will.

Secondly—Without her consent.

Thirdly—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly—With or without her consent, when she is under sixteen years of age.

Explanation—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Punishment for rape.

376. Whoever commits rape shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of unnatural offences

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII

OF OFFENCES AGAINST PROPERTY

Of theft

Theft.

378. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1 : A thing so long as it is attached to the earth, not being so movable property, is not the subject of theft ; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2 : A moving effected by the same act which effects the severance may be a theft.

Explanation 3 : A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4 : A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5 : The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the highroad, not in the possession of any person. A, by taking it commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Theft in dwelling house, etc.

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft by clerk or servant of property in possession of master.

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A commits theft on property in Z's possession ; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

*Of extortion***Extortion.**

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

Punishment for extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished

with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Extortion by putting a person in fear of death or grievous hurt.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with imprisonment for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life.

Putting person in fear of accusation of offence, in order to commit extortion.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

Of robbery and decoity

Robbery.

390. In all robbery there is either theft or extortion.

When theft is robbery.—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation : The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high roads, shows a pistol, and demands Z's purse, Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

Dacoity.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

Punishment for robbery.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Attempt to commit robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for dacoity.

395. Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Robbery, or dacoity, with attempt to cause death or grievous hurt.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause

death or grievous hurt, to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Making preparation to commit dacoity.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to gang of dacoits.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to gang of thieves.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of *thugs* or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of criminal misappropriation of property

Dishonest misappropriation of property.

403. Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1 : A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2 : A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly and is not guilty of an offence ; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact ?

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it : it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs ; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Dishonest misappropriation of property possessed by deceased person at the time of his death.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Of criminal breach of trust

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his

own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1 : A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2 : A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal breach of trust by carrier, etc.

407. Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust, in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by clerk or servant.

408. Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant or agent.

409. Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Of the receiving of stolen property***Stolen property.**

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Habitually dealing in stolen property.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Assisting in concealment of stolen property.

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Of cheating***Cheating.**

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation : A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby, dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats ; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

Cheating by personation.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation : The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B a person who is deceased. A cheats by personation.

Punishment for cheating.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating and dishonestly inducing delivery of property.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of fraudulent deeds and dispositions of property

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

421. Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other persons, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing debt being available for creditors.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Of mischief***Mischief**

425. Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1 : It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2 : Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A, causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Punishment for mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Mischief causing damage to the amount of fifty rupees.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming animal of the value of ten rupees.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever

may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, river or channel.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by destroying, moving or rendering less useful a light-house or sea-mark.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

435. Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy house, etc.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished

with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in section 437 committed by fire or explosive substance.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Of criminal trespass

Criminal trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass".

House-trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building, used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

Explanation : The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Lurking house-trespass.

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the

trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

Lurking house trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

House breaking.

445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described ; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

First—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance ; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly—If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

Sixthly—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation : Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

(a) A commits house-trespass by making a hole through the wall of Z's house and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

House-breaking by night.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night".

Punishment for criminal trespass.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for house-trespass.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

House-trespass in order to commit offence punishable with death.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with imprisonment for life.

450. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with imprisonment.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine ; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass after preparation for hurt, assault or wrongful restraint.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking.

453. Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

454. Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly breaking open receptacle containing property.

461. Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*CHAPTER XVIII***OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS****Forgery.**

463. Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Making a false document.

464. A person is said to make a false document—

First—Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed ; or

Secondly—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

Thirdly—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations

(a) A has a letter of credit upon B for rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000 and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill. A is guilty of forgery.

(f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z, A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property. A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1 : A man's signature of his own name may amount to forgery.

Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z, at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency: A has committed forgery under the first head of the definition.

Explanation 2 : The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Punishment for forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Forgery of record of Court or of public register, etc.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or

burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery of valuable security, will, etc.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Forgery for purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery for purpose of harming reputation.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Forged document.

470. A false document made wholly or in part by forgery is designated "a forged document".

Using as genuine a forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.

473. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section

of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.

475. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

476. Whoever counterfeits upon, or in the substance of any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secrets or attempts to secret any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Falsification of accounts.

477A. Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or

has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation : It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud or any particular day on which the offence was committed.

Of property and other marks

Trade mark.

478. [Omitted]

Property mark.

479. A mark used for denoting that movable property belongs to a particular person is called a property mark.

Using a false trade mark.

480. [Omitted]

Using a false property mark.

481. Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods, contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Punishment for using a false property mark.

482. Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a property mark used by another.

483. Whoever counterfeits any property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a mark used by a public servant.

484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or possession of any instrument for counterfeiting a property mark.

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of

either description for a term which may extend to three years, or with fine, or with both.

Selling goods marked with a counterfeit property mark.

486. Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and
- (b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or
- (c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Tampering with property mark with intent to cause injury.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Of currency-notes and bank-notes

Counterfeiting currency-notes or bank-notes.

489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation : For the purposes of this section and of sections 489B, 489C, 489D and 489E the expression “bank-note” means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.

Using as genuine, forged or counterfeit currency-notes or bank-notes.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of forged or counterfeit currency-notes or bank-notes.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

489D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or using documents resembling currency-notes or bank-notes.

489E. (1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.

CHAPTER XIX

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

Breach of contract of service during voyage or journey.

490. [Omitted]

Breach of contract to attend on and supply wants of helpless person.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend

to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to serve at distant place to which servant is conveyed at master's expense.

492. [Omitted]

CHAPTER XX
OF OFFENCES RELATING TO MARRIAGE

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marrying again during lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception : This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marriage ceremony fraudulently gone through without lawful marriage.

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Adultery.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Enticing or taking away or detaining with criminal intent a married woman.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**CHAPTER XXI
OF DEFAMATION**

Defamation.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1 : It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2 : It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3 : An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4 : No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

Imputation of truth which public good requires to be made or published.

First Exception : It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Public conduct of public servants.

Second Exception : It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Third Exception : It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question,

and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Publication of reports of proceedings of Courts.

Fourth Exception : It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation : A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Merits of case decided in Court or conduct of witnesses and others concerned.

Fifth Exception : It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Merits of public performance.

Sixth Exception : It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation : A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Censure passed in good faith by person having lawful authority over another.

Seventh Exception : It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with

that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court ; a head of a department censuring in good faith those who are under his orders ; a parent censuring in good faith a child in the presence of other children ; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils ; a master censuring a servant in good faith for remissness in service ; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to authorized person.

Eighth Exception : It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate ; if A in good faith complains of the conduct of Z, a servant, to Z's master ; if A in good faith complains of the conduct of Z, a child ; to Z's father—A is within this exception.

Imputation made in good faith by person for protection of his or other's interests.

Ninth Exception : It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Caution intended for good of person to whom conveyed or for public good.

Tenth Exception : It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Punishment for defamation.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing, or engraving matter known to be defamatory.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation : A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Intentional insult with intent to provoke breach of the peace.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Statements conducing to public mischief.

505. (1) Whoever makes, publishes or circulates any statement, rumour or report,—

- (a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such ; or
 - (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity ; or
 - (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community ;
- shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Statements creating or promoting enmity, hatred or ill-will between classes.

(2) Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence under sub-section (2) committed in place of worship, etc.

(3) Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour,

or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.

Punishment for criminal intimidation.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Criminal intimidation by an anonymous communication.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Act caused by inducing person to believe that he will be rendered an object of the divine displeasure.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

Word, gesture or act intended to insult the modesty of a woman.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Misconduct in public by a drunken person.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with

simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten-rupees, or with both.

CHAPTER XXIII

OF ATTEMPTS TO COMMIT OFFENCES

Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.

511. Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment or any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

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DIVISION

3

INDIAN EVIDENCE ACT

INDIAN EVIDENCE ACT, 1872

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INDIAN EVIDENCE ACT, 1872

[1 of 1872]

Preamble

Whereas it is expedient to consolidate, define and amend the law of Evidence ;
It is hereby enacted as follows :

PART I RELEVANCY OF FACTS

CHAPTER I PRELIMINARY

Short title, extent and commencement.

1. This Act may be called the Indian Evidence Act, 1872.

It extends to the whole of India except the State of Jammu and Kashmir and applies to all judicial proceedings in or before any Court, including Courts-martial, other than Courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act, 1934 (34 of 1934), or the Air Force Act but not to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator ;

and it shall come into force on the first day of September, 1872.

2. [Repeal of enactments—*Repealed*]

Interpretation clause.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

“Court”.

“Court” includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.

“Fact”.

“Fact” means and includes—

- (1) any thing, state of things, or relation of things, capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious.

Illustrations

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation, is a fact.

“Relevant”.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

“Facts in issue”.

The expression “facts in issue” means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation : Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations

A is accused of the murder of B.

At his trial the following facts may be in issue :—

That A caused B's death ;

That A intended to cause B's death ;

That A had received grave and sudden provocation from B ;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

“Document”.

“Document” means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing is a document ;

Words printed, lithographed or photographed are documents ;

A map or plan is a document ;

An inscription on a metal plate or stone is a document ;

A caricature is a document.

“Evidence”.

“Evidence” means and includes—

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ;
such statements are called oral evidence ;

- (2) all documents produced for the inspection of the Court ;
such documents are called documentary evidence.

“Proved”.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

“Disproved”.

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Not proved”.

A fact is said not to be proved when it neither proved nor disproved.

“India”.

“India” means the territory of India excluding the State of Jammu and Kashmir.

“May presume”.

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it :

“Shall presume”.

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved :

“Conclusive proof”.

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II

OF THE RELEVANCY OF FACTS

Evidence may be given of facts in issue and relevant facts.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation : This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue :—

A's beating B with the club ;

A's causing B's death by such beating ;

A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are the occasion, cause or effect of facts in issue.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1 : The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements ; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2 : When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate ; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owns B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant.

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant.

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A ; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer". This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—"A says you are to hide this". B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so

conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Government of India.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact ;
- (2) If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

- (a) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

- (b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C or D is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant—

- (a) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence ;
- (b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body or bodily feeling.

14. Facts showing the existence of any state of mind—such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling—are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

Explanation 1 : A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2 : But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(c) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(l) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms, are relevant facts.

(m) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question, are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime, is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

Facts bearing on question whether act was accidental or intentional.

15. When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations

(a) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Admissions

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission—by party to proceeding or his agent ; by suitor in representative character ; by party interested in subject-matter ; by person from whom interest derived.

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions. Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

- (1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or
- (2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the person making the statements.

Admissions by persons whose position must be proved as against party to suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration

The question is, whether a horse sold by A to B is sound.

A says to B—"Go and ask C, C knows all about it". C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases :

- (1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.
- (2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.
- (3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the Captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by fact in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding *Illustration*.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant unless and until the party proposing to prove them shows that he is entitled to give

secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admission in civil cases, when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation : Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police officer not to be proved.

25. No confession made to a police officer*, shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation : In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency or Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882).†

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

29. If such a confession is otherwise relevant, it does not become irrelevant

*As to statements made to police officer investigating a case, see section 162 of Criminal Procedure Code, 1973.

†See now the Criminal Procedure Code, 1973.

merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation : "Offence" as used in this section includes the abetment of, or attempt to commit, the offence.

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C". The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C".

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Admissions not conclusive proof, but may estop.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Statement by persons who cannot be called as witnesses

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases ;

When it relates to cause of death ;

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

or is made in course of business ;

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty ; or of an acknowledgment written or signed by him of the

receipt of money, goods, securities or property of any kind ; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker ;

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest ;

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

or relates to existence of relationship ;

(5) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs ;

(6) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (a) ;

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

or is made by several persons, and expresses feelings relevant to matter in question ;

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations

(a) The question is, whether A was murdered by B ; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B ; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm, by which she was chartered to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window.

The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation : A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under special circumstances

Entries in books of account when relevant.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Relevancy of entry in public record, made in performance of duty.

35. An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature, contained in certain Acts or notifications.

37. When the Court has to form an opinion as to the existence on any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament of the United Kingdom, or in any Central Act, Provincial Act, or a State Act or in a Government notification or notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of His Majesty is a relevant fact.

Relevancy of statements as to any law contained in law-books.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

How much of a statement is to be proved

What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or

papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Judgments of Courts of Justice, when relevant

Previous judgments relevant to bar a second suit or trial.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

Relevancy of certain judgments in probate, etc., jurisdiction.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation ;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person ;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease ;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry ; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act.

Illustrations

(a) A and B separately sue C for libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A, afterwards, sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

*Opinions of third persons, when relevant***Opinions of experts.**

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing of that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant.

Illustrations

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting, when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation : A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration

(a) The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation : The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, etc., when relevant

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation,
or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinion of persons having special means of knowledge thereon, are relevant facts.

Opinion on relationship when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact :

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869), or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).

Illustrations

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion, when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant

In civil cases character to prove conduct imputed, irrelevant.

52. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

53. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

Previous bad character not relevant, except in reply.

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1 : This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2 : A previous conviction is relevant as evidence of bad character.

Character as affecting damages.

55. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation : In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition ; but except as provided in section 54 evidence may

be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II

ON PROOF

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

Facts judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need not be proved.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts :—

(1) All laws in force in the territory of India :

(2) All public Acts passed or hereafter to be passed by Parliament of the United Kingdom, and all local and personal Acts directed by Parliament of the United Kingdom to be judicially noticed :

(3) Articles of War for Indian Army, Navy or Air Force :

(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the State :

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland :

(6) All seals of which English Courts take judicial notice : the seals of all the Courts in India, and of all Courts out of India established by the authority of the Central Government or the Crown Representative : the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by the Constitution or an Act of Parliament of the United Kingdom or an Act or Regulation having the force of law in India :

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette :

(8) The existence, title and national flag of every State or Sovereign recognised by the Government of India :

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette :

(10) The territories under the dominion of the Government of India :

(11) The commencement, continuance, and termination of hostilities between the Government of India and any other State or body of persons :

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it :

(13) The rule of the road, on land or at sea.

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings :

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV

OF ORAL EVIDENCE

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases, whatever, be direct ; that is to say—

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it ;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it ;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner ;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable :

Provided also that, if oral evidence refers to the existence or condition of any material things other than a document, the Court may, if it thinks fit, require the production of such material things for its inspection.

CHAPTER V

OF DOCUMENTARY EVIDENCE

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1 : Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2 : Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained ;
- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies ;
- (3) copies made from or compared with the original ;
- (4) counterparts of documents as against the parties who did not execute them ;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence ; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, the secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :—

- (a) when the original is shown or appears to be in the possession or power—
of the person against whom the document is sought to be proved, or
of any person out of reach of, or not subjected to, the process of the Court, or
of any person legally bound to produce it,
and when, after the notice mentioned in section 66, such person does not produce it ;
- (b) when the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest ;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;
- (d) when the original is of such a nature as not to be easily movable ;
- (e) when the original is a public document within the meaning of section 74 ;
- (f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India, to be given in evidence ;
- (g) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the part proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader such notice to produce it as is prescribed by law ; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :

- (1) When the document to be proved is itself a notice ;
- (2) When, from the nature of the case, the adverse party must know that he will be required to produce it ;
- (3) When it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;
- (4) When the adverse party or his agent has the original in Court ;

- (5) When the adverse party or his agent has admitted the loss of the document ;
- (6) When the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing or seal with others admitted or proved.

73. In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger impression.

*Public documents***Public documents.**

74. The following documents are public documents :—

(1) Documents forming the acts, or records of the acts—

- (i) of the sovereign authority,
- (ii) of official bodies and tribunals, and
- (iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country.

(2) Public records kept in any State of private documents.

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal ; and such copies so certified shall be called certified copies.

Explanation : Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows :—

- (1) Acts, orders or notifications of the Central Government in any of its departments, or of the Crown Representative or of any State Government or any department of any State Government,
by the records of the departments, certified by the heads of those departments respectively,
or by any document purporting to be printed by order of any such Government or, as the case may be, of the Crown Representative ;
- (2) The proceedings of the Legislatures,
by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned ;
- (3) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,
by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer ;

- (4) The acts of the Executive or the proceedings of the Legislature of a foreign country,
by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some Central Act ;
- (5) The proceedings of a municipal body in a State,
by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body ;
- (6) Public documents of any other class in a foreign country,
by the original, or by a copy certified by the legal keeper thereof, with a certificate, under the seal of a Notary Public, or of an Indian Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to documents

Presumption as to genuineness of certified copies.

79. The Court shall presume to be genuine every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir, who is duly authorized thereto by the Central Government : Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine ; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette, or any Official Gazette, or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament of the United Kingdom printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate ; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice Consul, or representative of the Central Government, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of India or of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of India or Her Majesty's dominions is a Political Agent therefor, as defined in section 3, clause (43) of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

Presumption as to books, maps and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent ; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, etc., of documents not produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

90. Where any document, purporting or proved to be thirty years old is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation : Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be ; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee.

The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in India may be proved by the probate.

Explanation 1 : This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2 : Where there are more originals than one, one original only need be proved.

Explanation 3 : The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same facts.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties of any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the decree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Calcutta to London". The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called "the Rampur tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed, cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words "Bought of A a horse for Rs. 500". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month". A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations

(a) A agrees, in writing, to sell a horse to B for "Rs. 1,000, or Rs. 1,500". Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies

accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration

A sells to B, by deed, "my estate at Rampur containing 100 bighas". A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document in unmeaning reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration

A sells to B, by deed, "my house in Calcutta".

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations

(a) A agrees to sell to B, for Rs. 1,000, "my white horse". A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dakkhan or Haidarabad in Sindh was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration

A agrees to sell to B "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters, etc.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local, and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration

A, a sculptor, agrees to sell to B "all my mods". A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (10 of 1865)* as to the construction of wills.

PART III

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER VII

OF THE BURDEN OF PROOF

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence was given on either side, B would not be entitled to retain his possession.

Therefore, the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

*See, now the Indian Succession Act, 1925.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration

**(a)* A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations

(a) A, accused of murder, alleges that by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code (45 of 1860), provides that whoever except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

**Sic.* In the Act, as published in Gazette of India, there is no illustration (b).

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108. Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation to active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage, conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any other time when he could have been begotten.

Proof of cession of territory.

113. A notification in the Official Gazette that any portion of British territory has before the commencement of Part III of the Government of India Act, 1935

been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Court may presume existence of certain facts

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

- (a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;
- (b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars ;
- (c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;
- (d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ;
- (e) That judicial and official acts have been regularly performed ;
- (f) That the common course of business has been followed in particular cases ;
- (g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;
- (h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;
- (i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged ;

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it ;

As to *illustration (a)*—A shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

As to *illustration (b)*—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself ;

As to *illustration (c)*—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable ;

As to *illustration (d)*—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence ;

As to *illustration (e)*—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course ;

As to *illustration (f)*—A judicial act, the regularity of which is in question, was performed under exceptional circumstances ;

As to *illustration (g)*—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances ;

As to *illustration (h)*—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family ;

As to *illustration (h)*—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked ;

As to *illustration (i)*—A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII

ESTOPPEL

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant ; and of licensee of person in possession.

116. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title of such immovable property ; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it ; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation 1 : The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2 : If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX

OF WITNESSES

Who may testify.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation : A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs ; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands—Husband or wife of person under criminal trial.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate ; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communications during marriage.

122. No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married ; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

125. No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue Officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation : "Revenue Officer" in this section means any officer employed in or about the business of any branch of the public revenue.

Professional communications.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure—

- (1) any such communication made in furtherance of any illegal purpose ;
- (2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation : The obligation stated in this section continues after the employment has ceased.

Illustrations

(a) A, a client, says to B, an attorney—"I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, etc.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Privilege not waived by volunteering evidence.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is

mentioned in section 126 ; and if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Confidential communications with legal advisers.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Production of title-deeds of witness not a party.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of documents which another person, having possession could refuse to produce.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Witness not excused from answering on ground that answer will criminate.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind :

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Accomplice.

133. An accomplice shall be a competent witness against an accused person ; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X

OF THE EXAMINATION OF WITNESSES

Order of production and examination of witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant ; and the Judge shall admit the evidence if he thinks that the fact, if proved would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.

The re-examination shall be directed to the explanation of matters referred to in cross-examination ; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

When they must not be asked.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation : A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him". This statement is relevant as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

- (1) to test his veracity,
- (2) to discover who he is and what is his position in life, or
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—

- (1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies ;
- (2) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies ;
- (3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence ;
- (4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations

(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty.

He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

- (1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit ;
- (2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence ;
- (3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;
- (4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation : A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

(a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact, admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document :

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 159.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it : such party may, if he pleases, cross-examine the witness thereupon.

Production of documents.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence ; and if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code (45 of 1860).

Giving, as evidence, of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing requires him to do so.

Using, as evidence, of document, production of which was refused on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or order of the Court.

Illustration

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness or of the parties, about any fact relevant or irrelevant ; and may order the production of any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question :

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved :

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party ; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the judge himself might put and which he considers proper.

CHAPTER XI

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

No new trial for improper admission or rejection of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

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[Enactments repealed.]

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